INDIVIDUAL LEDGER

UNITED STATES NATIONAL BANK IN LOS ANGELES

Objector's Exhibit 2-34 to Deposition of [illegible]

Walter Kalom Smith

OLD BALANCE	DATE	CHECKS IN DETAIL			DATE	DEPOSITS	BALANCE
		BALANCE BROUGHT FORWARD					
	AUG 16	131822-	4000-		AUG 16	9,223.00	7,870.78
7,870.78	AUG 17	25500-					7,615.78
7,615.78	AUG 17	15500-					7,460.78
7,460.78	AUG 18	107.75-	41538-	16425-			6,773.40
6,773.40	AUG 18	100000-	6900-				3,704.40
3,704.40	AUG 20	635-	10000-	2380-			
	AUG 20	2500-					3,549.25
3,549.25	AUG 20		66700-	7800-			4,707.25
	AUG 21	1485-	1800-	500-			
4,707.25	AUG 21	750-	16000-				4,745.90
4,745.90	AUG 21	8010-					4,665.80
4,665.80	AUG 21	73500-					3,930.80
3,930.80	AUG 22	800-					3,922.80
3,922.80	AUG 22	1282-					3,909.98
3,909.98	AUG 23	17859-					3,731.39
3,731.39	AUG 24	3552-	430-	2318-			
	AUG 24	998-	1690-				3,433.11
3,433.11	AUG 24	10951-					3,323.40
3,323.40	AUG 24	1000-					3,313.40
3,313.40	AUG 24	390000-					2,923.40
2,923.40	AUG 25	671-	2708-	2382-	AUG 25		280.39
280.39	AUG 25	355-	500-				2,845.84
2,852.84	AUG 27	34792-			AUG 27		2,504.54
2,504.54	AUG 27	100000-			AUG 27		2,404.54
2,404.54	AUG 28	30000-	13375-	33500-			
	AUG 28	5117-			AUG 28		1,834.00
1,834.00	AUG 30	750-	5600-	9836-			
	AUG 30	2500-			AUG 30		1,647.74

Objector's Exhibit 2-35 to deposition of [illegible]

MAIN OFFICE

3013

SUMMARY BALANCES

1,047.74		25 -	34.00 -	15.92		1,047.74
159.51		50.00 -	50.00 -			159.51
149.51		30.00 -				149.51
119.51		54.00 -	511.42	1.40		119.51
1,076.69		50.00 -	60.00			1,076.69
1,015.05		10.00 -	450.00 -	50.00 -		1,015.05
394.22		500 -	15.83 -			394.22
1,394.22					1,000.00	1,394.22
1,384.22		10.00 -				1,384.22
1,223.60		120.00 -	36.90 -	1.72		1,223.60
73.12		491.48 -				73.12
507.97		178.50 -	25.00 -	22.85		507.97
482.19		25.78 -				482.19
460.09		21.00 -				460.09
		50.00 -		1.00.00 -		
		50.00 -		50.00 -		
460.09		7.64 -	4.05 -	12.50 -		
		6.50 -	9.30 -	6.00 -		432.30
		6.40 -				429.90
432.30		3.00 -				424.90
429.90		5.00 -				
424.90		10.00 -				414.90
		12.40 -				
		48.00 -				
		41.70 -	2.5 -			317.00
		2.00 -				7.10
7.10	NOV 1 99	50 -				6.10
7.10	JAN 1 99	1.00 -				.00
6.10	DEC 9 99	SERVICE CHGES 6.10 -		DEC 9 99		
	FEB 10 99			FEB 10 99	6.10	6.10

Objectors Exhibit 2-36 to Deposition of N. R. Dunn. 7-9-42. C. W. McClain, Notary Public.

Beveridge VA 5056

In the District Court of the United States
For the Central Division, Southern District of California

In the Matter of Golden State Gem Company, Bankrupt. No. 13393-J, in Bankruptcy.

To Receiver of the United States Nat'l Bank and or one of his representatives or employees.

Whereas, Golden State Gem Company, Los Angeles, in the County of Los Angeles, and State of California, has been duly adjudged bankrupt, and the proceeding in bankruptcy is pending in the District Court of the United States for the Southern District of California.

These are to require you, to whom this summons is directed, personally to be and appear before Earl E. Moss, 667 Subway Terminal Bldg., one of the Referees in Bankruptcy of the said Court, at Los Angeles, on the 22nd day of April, 1932, at 9 o'clock in the forenoon, then and there to be examined in relation to said bankruptcy.

Witness the Honorable Wm. P. James, Judge of said Court, and the seal thereof, at Los Angeles this 21st day of April, A. D. 1931.

R. S. ZIMMERMAN, Clerk.
(Seal) By L. B. FIGG, Deputy Clerk.

Return of Summons to Witness.

In the District Court of the United States for the..... District of.....

In the Matter of.....Bankrupt.

In Bankruptcy.

On this.....day of....., A.D. 19..., before me came....., of....., in the County of.....,

and State of....., and makes oath, and says that he did, on....., the.....day of ..... in the County of....., and State of....., with a true copy of the summons hereto annexed, by delivering the same to him; and he further makes oath, and says that he is not interested in the proceedings in bankruptcy named in said summons.

.....

Subscribed and sworn to before me this.....day of ....., A. D. 19.....

.....

and bring with you the account of the Golden State Gem Company of Nevada a corporation, and records and receipts showing in whose name certain jewelry merchandise described as "100 lbs zircons and 4000 lbs of sapphires" said property was held by said bank when it was shipped to said Bank from San Francisco, California by claimant, M. E. Heiser; also a record of the circumstances under which the Bank went out of possession of said property any and all statements of accounts, records, receipts, bills of lading in the name of M. E. Heiser, Golden State Gem Company of Nevada, a corporation, and/or Golden State Gem Company of California, a corporation.

*Matter in italics appeared in handwriting on original.

Objectors Exhibit 2-37. To Deposition of N. R. Dunn. 7-9-42. C. W. McClain, Notary Public.

Office of the Marshal of the Municipal Court, City of Los Angeles

Los Angeles, Calif., Mar. 14th, 1929

To Mr. U. S. Natl. Bank, 758 So. Spring St.

You will please take notice that all moneys, goods, credits, effects, debts due or owing, or any personal property in your possession or under your control belonging to the within defendant .....
or either of them, are attached by virtue of a writ of which

this is a copy, and you are notified not to pay over or transfer the same to any one but Chas. R. Thomas, Marshal of Municipal Court, City of Los Angeles, or some one legally authorized to receive the same, but to conduct yourself in accordance with the statutes made and provided. I also require of you a statement in writing of the amount of same.

CHAS. R. THOMAS,
Marshal of Municipal Court,
City of Los Angeles

By (name illegible),
Deputy.

Golden State Gem Co.
No. 122717
Municipal Court
City of Los Angeles
County of Los Angeles, California

E. A. Miller, Plaintiff, vs. Golden State Gem Co., of Nev/ a corporation et al., Defendant.

Writ of Attachment

U. S. National Bank, 758 So. Spring St.

SARAH B. DANNING,
416 Fay Bldg.
TU 4126.
Attorney for Plaintiff.

L. J. Meyberg
Vandyke 6089
Tucker 7329

J. A. Coleman Atty.
M. Heiser
→*Golden State Gem Co.*
Walter Calvin Smith
Australian American Gem Mining Co.

*Matter in italics in handwriting on original.

Objectors Exhibit 2-38 to Deposition of N. R. Dunn. 7-9-42. C. W. McClain, Notary Public.

In the Municipal Court, City of Los Angeles County of Los Angeles, State of California

No.....

Writ of Attachment

Demand $.....

E. A. Miller, Plaintiff vs. Golden State Gem Co., of Nev., a corporation, et al., Defendant.

The People of the State of California:

To the Sheriff or any Marshal or Constable of the County of Los Angeles, Greeting:

You are hereby commanded to attach and safely keep all the property of the above named defendant a number of sacks purporting to weigh about 4000 lbs. and said to contain uncut sapphires, value unknown, and on which storage charges have accumulated in our favor to the extent of about $100.00., in this County, not exempt from execution, or so much thereof as may be sufficient to satisfy plaintiff's demands, to-wit: Six Hundred Twenty-nine and no/100 ($629.00) Dollars with interest at 7 per cent per annum from March 1, 1929, and Seventy-five ($75.00) dollars, Attorney's fees, besides the costs, unless the said defendant shall give you the security required by Section 540 of the Code of Civil Procedure of the State of California; in which case you will take such security.

Witness the Honorable Presiding Judge of the Municipal Court, City of Los Angeles, County of Los Angeles, State of

California, attested by my hand and the seal of said Court this.....day of March, 1929.

W. S. DIXSMORE,
Clerk of Municipal Court City of Los Angeles, County of Los Angeles, State of California.

(Seal) By.....
Deputy.

Served
2:30 pm.
3/14/29
Return
made 3/19/29
J.A.S.

Matter in italics in handwriting on original.

Objector's exhibit 1 to deposition of Arlatt

21635

Colyear Van and Storage Co. Checking List

Lot No. _____ Location _____

Name Fra[illegible] B Cook

Hauled by Co Truck

Order No. C-11 Date Rec'd 6-9-82

1	Bag	Roof		1	
2	Bag	Roof	Weight	94	
3	Bag	Roof	Weight	105	
4	Bag	Roof	Weight	75	
5	Bag	Roof	Weight	111	
6	Bag	Roof	Weight	128	
7	Bag	Roof	Weight	116	
8	Bag	Roof	Weight	109	
9	Bag	Roof	Weight	136	
10	Bag	Roof	Weight	104	
11	Bag	Roof	Weight	122	
12	Bag	Roof	Weight	135	
13	Bag	Roof	Weight	177	
14	Bag	Roof	Weight	132	
15	Bag	Roof	Weight	104	
16	Bag	Roof	Weight	132	
17	Bag	Roof	Weight	82	
18	Bag	Roof	Weight	129	
19	Bag	Roof	Weight	121	
20	Bag	Roof	Weight	135	
21	Bag	Roof	Weight	131	
22	Bag	Roof	Weight	117	
23	Bag	Roof	Weight	155	
24	Bag	Roof	Weight	133	
25	Bag	Roof	Weight	130	
26	[illegible]			94	
27	Bag	Roof	Weight	140	
28	[illegible]			107	
29	Carton	[illegible]		112	
30	Carton	[illegible]		104	
31	[illegible]			131	
32	Box	Roof	Weight	[illegible]	
33	[illegible]		Weight	127	
34	Bag	Roof	Weight	103	
35	[illegible]			[illegible]	
36					
37					
38					
39					
40					

41					
42	1 Box				
43					
44	[illegible]				
45	[illegible]				
46					
47					
48					
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78					
79					
80					

Received above goods from COLYEAR VAN & STORAGE CO. in good condition except as noted.

Checked out by _____ Name _____

Date delivered _____ Address _____

Out by _____ Carrier _____

Objector's Exhibit 2 to deposition of Warlatt

DUPLICATE

WAREHOUSE RECEIPT
AND CONTRACT

8/9-[illegible]
21838
No 1012
S 11

COLYEAR'S
VAN & STORAGE CO.

Franklin D. Roth Howard L. Woodruff

READ THIS CONTRACT

NOT NEGOTIABLE

POSITIVELY NO GOODS DELIVERED UNTIL ALL CHARGES ARE PAID

$1.75 $1.75
$8.80

No person is authorized to make any other agreement or condition on behalf of the company.
Received original receipt subject to above terms and conditions. COLYEAR'S VAN & STORAGE CO.

BY

SCHEDULE IF NOT CORRECT PLEASE REPORT IMMEDIATELY

No. 1	Bag	Rock	Weight 188#	No. 24	Bag	Rock	Weight 133#
2	Bag	Rock	" 94 (2 Bags in one 51# & 45#)	25	Bag	Rock	" 136
3	Bag	Rock	" 106 (Tin in Bag)	26	Bag	Rock	" 94
4	Bag	Rock	" 98 (Tin in Bag)	27	Bag	Rock	" 140
5	Bag	Rock	" 111 (Tin in Bag)	28	Bag	Rock	" 107
6	Bag	Rock	" 128	29	Carton	Rock	" 112
7	Bag	Rock	" 115	30	Carton	Rock	" 104
8	Bag	Rock	" 109	31	Box	Rock	" 131
9	Bag	Rock	" 136	32	Box	Rock	" 100
10	Bag	Rock	" 104	33	Box	Rock	" 127
11	Bag	Rock	" 142	34	Barrel	Rock	" 108
12	Bag	Rock	" 100	35	Barrel	Rock	" 188
13	Bag	Rock	" 147				
14	Bag	Rock	" 138				
15	Bag	Rock	" 104				
16	Bag	Rock	" 138				
17	Bag	Rock	" 82				
18	Bag	Rock	" 129				
19	Bag	Rock	" 121				
20	Bag	Rock	" 138				
21	Bag	Rock	" 131				
22	Bag	Rock	" 117				
23	Bag	Rock	" 133				

Objector's Ex. 2-A to Dep. of J. A. Seelye

UNITED STATES NATIONAL BANK OF LOS ANGELES

SCHEDULE OF BALANCES

OLD BALANCE	DATE	CHECKS IN DETAIL	DEPOSITS	BALANCE
			SEP 6'28	1,043.36
1,043.36	SEP 6'28	629.23 -		414.13
414.13	SEP 12'28	10.00 -		404.13
[illegible]	SEP 28'28	[illegible]		[illegible]
373.06	OCT 8'28		OCT 8'28 33.33	406.39
406.39	OCT 17'28	60.90 -		345.49
345.49	NOV 7'28		NOV 7'28 28.00	373.49
[illegible]	DEC 24'28			[illegible]
[illegible]	DEC 28'28			[illegible]
1,025.49	JAN 9'29	75.62 -	JAN 9'29	949.87
949.87	JAN 31'29			874.87
974.87	MAR 5'29	213.00 -	MAR 5'29	761.87
761.87	MAR 6'29		MAR 6'29 25.00	786.87
[illegible]	JAN 27'29			811.87
[illegible]	MAY 1'29			[illegible]
836.87	JUN 5'29		JUN 5'29 25.00	861.87
861.87			JUL 5'29 25.00	886.87
886.87		886.87 -	JUL 27'29	00.00
25.00	DEC 4	12.00 -	AUG 16'29 DEC 4	25.00 13.00

Trans to Trust Sheet
Y-10-31

Objectors Exhibit 3 to Dep. of C. B. Marlett, 7/9/42. C. W. McClain, Notary Public.

Francis B. Cobb

Attorney at Law

760 Subway Terminal Building

Los Angeles, California

Phone MUtual 0416

June 28th, 1933.

Colyear's Van & Storage Co., 415 So. San Pedro Street, Los Angeles, Calif.

Gentlemen: Will you kindly issue a new warehouse receipt covering thirty-five (35) bags and cartons of rocks which are now stored with you under your warehouse receipt No. 21635 on your order No. 511, to Howard L. Woodruff upon the payment of your charges to date.

Yours very truly,

FBC:DH FRANCIS B. COBB.

[Objectors' exhibit 1 to the deposition of C. N. Olson, designated portions of reporter's transcript of proceedings, No. 13393-J, United States District Court, Southern District of California, in re Golden State Gem Company, is identical with objectors' exhibit NN, the designated portions of which appear at page 1046.]

Objectors Ex. 1-B to Dep. of J. A. Seelye, 7/8/42. C. W. McClain, Notary Public.

In the Superior Court of the State of California
In and for the County of Los Angeles

Writ of Attachment.

Leonard Woodruff, Plaintiff, vs. Golden State Gem Co., et al. Defendants.

The People of the State of California to the Sheriff of the County of Los Angeles, Greeting:

Whereas, the above entitled action was commenced by Plaintiff in the Superior Court of the County of Los Angeles to recover from the Defendants, Golden State Gem Co., a California Corporation, and Golden State Gem Co., of Nevada, a Nevada corporation, the sum of $1069.40.....Dollars lawful money of the United States, besides interest at the rate of 7 per cent per annum from the 9th day of April, 1929. and costs of suit; and an affidavit for, and undertaking on, attachment, have been filed as required by law.

Now, you are commanded to attach and safely keep all property of such Defendants, Golden State Gem Co., a California Corporation, and Golden State Gem Co., of Nevada, a Nevada Corporation, within your County, not exempt from execution, or so much thereof as may be sufficient to satisfy the Plaintiff's demand against such Defendants unless such Defendants give you security, by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand against such Defendants, besides costs, or in an amount equal to the value of the property of such Defendants, which has been or is about to be attached; in which case you will take such undertaking, and hereof make service and return.

Witness the Honorable and Presiding Judge of the Superior Court, attested by my hand and the seal of said Court, this 19th day of April, 1929.

Seal of Superior Court

L. E. LAMPTON, County Clerk.
By W. D. BUCKLEY, Deputy.

Objectors Ex. 1-A and 1-B to Dep. of J. A. Seelye 7/8/42. C. W. McClain, Notary Public.

To the Sheriff of Los Angeles County:

Under and by virtue of a within Writ of attachment, you will please attach all of the following described personal property, located at 726-728½ South San Pedro Street, Los Angeles, California, to-wit:

1 pipe organ coral
4 oil paintings
2 time clocks
4 silver candlesticks
5 silver vases
1 silver salt shaker
1 pr. spectacles
2 shell ink wells
1 American Adding Machine
2 Oliver typewriters (old)
1 large crystal ball with stand
1 small crystal ball and stand
1 large crystal ball without stand
1 Agate perfume bottle with cork
1 case of watch crystals
22 wrist watches
8 rings in cases
26 Kunsite stones (cut)
2 bbls carborundum
1 large drop press
1 large microscope
2 small magnifying glasses
4 gas heaters
4 gas plates and gas jets
2 rolls carborundum cloth
2 looking glasses
1 Goodell press drill (hand)
1 step ladder
1 typewriter desk
1 tape wrapping machine
100 pr. *Immitation* beads

Also 4,000 pounds more or less of rough sapphire stones, and 1000 oz. of Zircon stones located in the United States National Bank at 758 South Spring Street, Los Angeles, California.

Bank

You will please put a Custodian in charge at 726 South San Pedro Street, Los Angeles, California, at plaintiff's cost and remove property from the United States National Bank for safe keeping. no chattel mtg on above.

J. A. COLEMAN,
Attorney for Plaintiff.

Matter in italics in handwriting on original.

Golden State Gem Co.

No. 246-469, Superior Court, County of Los Angeles

Leonard Woodruff vs. Golden State Gem Co., et al.

Writ of Attachment

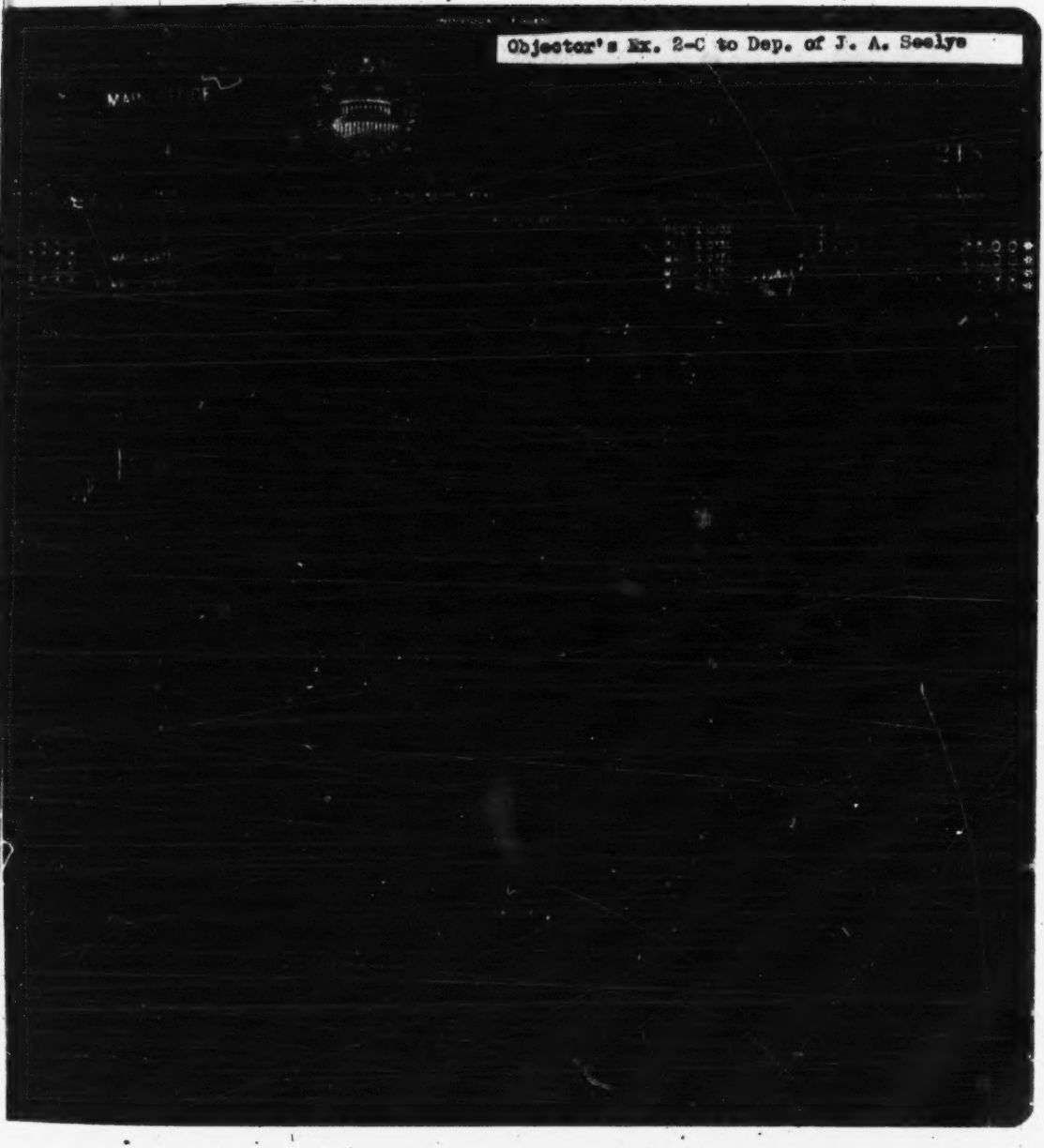
12/55 p.m.
4/19/29
JAS

J. A. COLEMAN,
458 South Spring Street,
Attorney for Plaintiff.

Matter in italics in handwriting on original.

Objector's Exhibit 2-B to Dep. of J. A. Seelye

Objector's Ex. 2-C to Dep. of J. A. Seelye



Deposition of M. E. Heiser.

In the United States District Court in and for the Eastern District of Oklahoma. In the Matter of the Bankruptcy of Leonard J. Woodruff, Bankrupt (Debtor). No. 7623—Bankruptcy.

Be It Remembered, that on Tuesday, the 26th day of August, 1941, at 10 o'clock A.M., pursuant to Notice of Intention to Take Deposition, hereto annexed, at the office of Oscar Samuels, Esquire, Room 1700, 333 Montgomery Street, San Francisco, California, personally appeared before me, Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, M. E. HEISER, a witness called on behalf of the debtor, Leonard J. Woodruff, in the above-entitled action.

T. W. Champion, Esquire, and Louis A. Fischl, Esquire, represented by Oscar Samuels, Esquire, and Tevis Jacobs, Esquire, appeared as attorneys for the debtor, Leonard J. Woodruff; and Leonard J. Meyberg, Esquire, appeared as attorney for M. E. Heiser.

The said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the above-entitled cause, did thereupon depose and say as hereinafter set forth.

It was stipulated between counsel for the respective parties that the Notary Public, after administering the oath to the witness, need not remain further during the taking of this deposition.

It was further stipulated that the said deposition should be recorded stenographically by Frank L. Hart, a competent official shorthand reporter and a disinterested person, and thereafter transcribed by him into longhand typewriting, to be read to, or by, the said witness, who, after making such corrections therein as may be necessary, will subscribe the same.

It was further stipulated that all objections to questions propounded to the said witness shall be reserved by each of the parties, save and except any objections as to the form of the questions propounded.

It was further stipulated that if the witness should be instructed not to answer questions propounded by counsel, in the absence of the Notary Public, it shall be deemed that the Notary Public has so instructed the witness to answer, but that he still refuses to answer.

Mr. Samuels: Will you swear the witness, please. Will you raise your right hand, kindly, Mr. Heiser and be sworn?

(Thereupon the Notary Public administered the statutory oath to the witness.)

Mr. Samuels: May we have this stipulation, Mr. Meyberg, that the Notary can be excused from attending during the taking of the deposition; and that should the witness refuse to answer any question upon the advice of counsel the Notary will have been deemed to have instructed the witness to answer and the refusal reiterated by the witness?

Mr. Meyberg: We will so stipulate, provided under any such circumstances you will notify the witness of this particular fact and he be given a second opportunity to answer.

Mr. Samuels: That will be perfectly agreeable.

Mr. Meyberg: So that he will know what the circumstance is, just as though she were in here.

Mr. Samuels: That will be agreeable.

Mr. Reporter, I can give you the title of court and cause to be returned with the deposition. That is a certified copy of the notice.

M. E. HEISER, a witness called on behalf of the debtor, Leonard J. Woodruff, being first duly cautioned and sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Examination by Mr. Samuels.

Mr. Samuels: Q. Mr. Heiser, you are the M. E. Heiser who has filed a claim in the matter of the bankruptcy of Leonard J. Woodruff, bankrupt (debtor), No. 7623—Bank-

ruptcy, pending in the United States District Court in and for the Eastern District of Oklahoma?

A. Yes, sir.

Q. When did you first come to San Francisco, Mr. Heiser?

A. The end of 1914 or the early part of 1915. That was a long time ago, Mr. Samuels, but I think that is correct.

* * * * *

Q. And did you come to San Francisco at that time because of the Panama-Pacific Exposition which had opened, or which was about to open in the City of San Francisco?

A. Yes.

Q. Were you in any wise connected with such exposition by way of display or sale of merchandise, or otherwise?

* * * * *

A. Yes.

Q. What particular feature of those mentioned by me was your connection with the Exposition?

Mr. Meyberg: May I have that question read?

(Pending question read.)

Mr. Meyberg. Those mentioned by you as counsel. I did not hear you mention any particular feature.

Mr. Samuels: Was it to sell, or exhibit, or some other connection? Don't take this down unless counsel wishes.

Mr. Meyberg: I have no objection to his answering that if he knows.

A. I was generally exhibiting all classes of gems. I had a large cutting plant, exhibiting cuttings also, and I had the only free permit to sell gems at the Exposition. All the others were in bond.

Mr. Samuels: Q. When you refer to gems, what type of gems have you in mind?

A. Sapphires, opals, jades, and zircons.

* * * * *

Mr. Samuels: Q. Were you here in the capacity of official representative of any government?

A. No.

Q. From whom did you procure this exclusive privilege of selling the gems you have referred to?

* * * * *

A. Could I have that question read, please?

(Pending question read.)

A. I can't recollect now. That is going back twenty odd years, Mr. Samuels.

Mr. Samuels: Q. From any one official connected with the Exposition?

A. That I couldn't recollect.

Q. Where was your space in the Exposition where you conducted your sales located, and your cutting, I believe you stated?

A. In the Australian Building.

Q. What was the size of the space if you recollect it, approximately, of course?

A. Well, I couldn't give you the exact size, but it was in the corner of the Australian Building. It was not exactly a square building. We had a complete corner. I would say it was three times the size of this room.

Q. You mean both by length and width of this room?

A. Yes. It may have been a little larger or a little smaller. Offhand that is a long time ago to remember space, Mr. Samuels, and it is impossible for a man to give the exact measurements of a building and remembering since 1914.

Mr. Meyberg: He is just asking you for the best of your recollection, Mr. Heiser.

A. Well, I don't recollect.

Mr. Samuels: Suppose you and I determine the dimensions of this room so that the record will indicate something on it.

Mr. Meyberg: You know the size of the room, about.

Mr. Jacobs: It is about 18 or 20 feet.

Mr. Samuels: Suppose you step it off again.

Mr. Meyberg: What is it—square?

Mr. Samuels: It is a rectangle. Don't you think so?

Mr. Meyberg: I am not a very good judge.

Mr. Samuels: How many feet have you got for the length of the room?

Mr. Jacobs: It is between 18 and 20 feet.

Mr. Samuels: We will put down 18 to 20 feet in length, and that will allow some latitude. And now will you take the width, kindly.

Mr. Jacobs: I think it is the same—it is about 16 or 17 feet; it is a little narrower.

Mr. Samuels: So about 16 or 17 feet in width.

Mr. Meyberg: About 18 to 20 feet by 16 to 17 feet he says.

Mr. Samuels: What?

Mr. Meyberg: About 18 to 20 feet by 16 to 17 feet—is that about it?

Mr. Jacobs: Yes, that is about it.

Mr. Meyberg: What is the height, about?

Mr. Samuels: Well, the height—

Mr. Meyberg: You are not interested in the height?

A. Why don't you step off the height, too?

Mr. Samuels: Q. Did you have any assistant there?

A. Yes.

Q. And what was his name?

A. I couldn't recollect.

Q. It was a "he"?

A. I had several. I couldn't recollect their names.

Q. Do you recollect the name of any one of them?

A. No, sir.

Q. When did you commence your operations in the Exposition?

A. I think it was the opening day.

Q. The opening day?.

A. Pardon me. You mean commence the operations of demonstrating or cutting, or what?

Q. Whatever your operations were in the subjects allotted to you.

A. We were there from the beginning or opening.

Q. From the beginning of the Exposition?

A. Yes.

Q. And when did you discontinue those operations?

A. Before it closed.

Q. How long before it closed?

A. That I couldn't tell you.

Q. Can you approximate it?

A. No, sir.

Q. Can you state how long you were operating there?

A. No; I couldn't.

Q. You can't approximate it within a month or two months or three months?

A. No, sir.

Q. What prompted you to discontinue your operations prior to the close of the Exposition?

* * * * *

A. I can't recollect now.

Q. Where did these gems come from?

A. Australia.

Q. Did you bring them with you when you came into the United States?

* * * * *

A. They came from Australia.

Mr. Samuels: That is not an answer to the question I asked you.

Mr. Meyberg: Read the question, Mr. Reporter.

Mr. Samuels: You answered that question before.

(Pending question read as follows:

"Q. Did you bring them with you when you came into the United States?")

A. No.

Q. Did they precede your arrival here or follow it?

A. No, they came ahead of me.

Q. By whom were they shipped?

Mr. Meyberg: If you know.

A. I dont know exactly who they were shipped by. They were shipped through the Government—one of the Government agents, but I could't say which one it was now. As I said before, it was twenty odd years ago.

Mr. Samuels: Q. It was your private property?

A. Yes, sir.

Q. Can you explain how the Government shipped your private property?

* * * * *

A. No, I can't recollect now.

Q. You can't recollect?

A. That was twenty-six years ago.

Q. I am showing you, Mr. Heiser, a transcript of the testimony given in the case of Heiser vs. Woodruff in the District Court of the United States for the Southern District of California, Central Division, in an action No. 7,256-C-Law, and I am commencing at page 224.

* * * * * *

"Q. For how long a period of time have you actually done that yourself?

"A. I represented the Queensland Government at the Panama Exposition, as their expert cutter for demonstration, in 1915, in San Francisco, cutting, to demonstrate how the gems were cut and how they were mined."

Does that refresh your recollection?

A. Yes, sir.

Q. Did you represent the Queensland Government?

A. I represented the Queensland Government with gems in this State.

Q. What do you mean by your statement that you represented the Queensland Government with gems in this State?

A. Well, they selected me.

Q. Who are "they"?

A. The Government—the Governor of Queensland, to be exact, selected me to come over here with gems to that exhibit.

Q. What official of the Government selected you?

A. It was done at Government House. I was appointed by a committee. I couldn't tell you who the men were now.

Q. Were you given any official designation?

A. No. I didn't want an official designation.

Q. Did you have any governmental credentials of any kind?

A. No. All I had was a pass to the Exposition.

Mr. Samuels: Read that answer.

(Witness' answer read.)

Q. Wasn't a pass to the Exposition given to any person, firm or corporation, that had space in the Exposition?

Mr. Meyberg: That is objected to as calling purely for a conclusion of the witness.

Mr. Samuels: That does not call for his conclusion. That calls for his knowledge—if he knows.

Mr. Meyberg: If you know you can answer; if you know that fact, you may answer.

A. No, I don't know it.

Mr. Samuels: Q. Am I to understand from you that the reason you procured this pass was because you were an official representative of the Queensland Government?

A. No, I didn't say that I was an official of the Queensland Government.

Q. What was the reason for your procuring that pass?

A. Because I had more gems than any other man in Queensland, and they sent me over to represent them, and when I was here I was supposed to have free space, free power and light, and free access to and from the grounds and building.

* * * * * *

A. I received the pass because I was cutting stones in the Australian Pavilion.

Mr. Samuels: Q. Is it not a fact within your actual knowledge, Mr. Heiser, that every person, firm or corporation which displayed any merchandise or product at the Exposition, or which had any space there for any other purpose as a vendor or otherwise, had a pass to the Exposition?

Mr. Meyberg: Now, answer that question, if you know.

A. That I don't know.

Mr. Samuels: Q. What was the extent of these gems which arrived from Australia—the quantity of them?

A. What gems have you reference to? What particular class of gems have you reference to?

Q. The gems which arrived from Australia, and which were shipped, as you stated, by some person for or on behalf of the Government, and which were to be used by you in connection with your display and your operations in the space mentioned by you?

A. There was a very large quantity. I couldn't tell you the exact amount. It ran to several tons.

Q. Several tons?

A. Yes, sir.

Q. In one shipment?

A. That I couldn't say. I think they came over in several shipments. They came over before the Exposition, if I remember correctly.

Q. Did they all arrive before the Exposition?

A. I am not sure. I think a box came a few weeks after. I am not positive of that, Mr. Samuels. I couldn't say for sure; I am not certain.

Q. And when did the first shipment arrive with relation to the opening of the Exposition?

A. That I couldn't tell you, sir. I haven't any recollection of it.

Q. Can't you tell us whether it was two months or three months or four months before that?

A. I think it came ahead of me—before I arrived from Australia. It was on a ship ahead of me, I think, but I am not positive?

Q. When did you arrive?

A. The exact date I couldn't tell you, sir.

Q. Who was here to receive the shipment on your behalf, if a shipment arrived prior to your entry into the United States, or the time you reached San Francisco?

A. I couldn't tell you who. It was some one designated by the Australian Pavilion exhibit; somebody in charge of that would have received it, but I couldn't tell you who it was, or when.

Q. When you say that, is that your deduction or knowledge?

A. That is what I assume.

Q. You have no knowledge of that?

A. No, sir.

Q. Then you do not know who was here, or who actually did receive any such shipment?

A. No; that is right, sir.

Q. You have a recollection, have you, of receiving a subsequent shipment yourself?

A. How do you mean, a subsequent shipment?

Q. You arrived here at a certain time, did you not?

A. That is right.

Q. You stated you believe one shipment at least reached here after your arrival. Have you a recollection of receiving that shipment, or any other shipment which arrived here after the time you reached San Francisco?

A. Well, I have a hazy recollection that there was another large quantity came in a couple of weeks after we started, but I wouldn't be sure. It was quite a few years ago, Mr. Samuels, and it is a tax on a man's memory to remember that far back.

. . . . . .

Q. Of this several tons of gems you referred to how much was industrial sapphires? And I believe we may refer to it as corundums—is that correct?

. . . . . .

(Pending question read as follows:

"Q. Of this several tons of gems you referred to how much was industrial sapphires?")

A. I can't recollect.

Q. Was it more than one ton?

A. I can't recollect. I should think so, but I couldn't recollect, Mr. Samuels.

Q. To the best of your knowledge and approximation? I do not expect you to give me the pounds, Mr. Heiser.

A. No, I couldn't right offhand.

Q. Were the industrial sapphires a larger portion of the aggregate shipments than any other type of gems?

A. I couldn't recollect.

Q. Then am I to understand that of the several tons of gems, commercial gems could have preponderated in quantity?

A. That I couldn't remember, sir.

* * * * *

Q. Do you know what other Australian firms displayed like material—like gems in the Australian Building, and which gems originated in or from Australia?

A. No, I couldn't remember now, sir.

Q. Do you know whether or not your name appeared in the official catalog of exhibitors at the Exposition?

A. No.

Mr. Meyberg: Wouldn't the catalog be the best evidence of that?

Mr. Samuels: I asked him first if he knows whether it showed his name, and then I will show it to him in a moment.

A. No, I don't know.

Q. Do you know approximately the number of Australian firms which displayed like Australian products or similar Australian products?

A. No, I haven't any recollection.

Q. You have no recollection of that at all?

A. No.

Q. Did you know a person by the name of H. Bambrick, of Sapphiretown, Queensland?

A. No. The name seems familiar, but I can't recall it, sir.

Q. Did you know a person by the name of V. Bambrick, of the same place?

A. No, sir, I can't place it.

Q. Did you know a person by the name of E. Burford, of Sapphiretown, Queensland?

A. No, I can't place the name.

Q. Do you recollect whether or not any one of the three persons named by me had an exhibit of like or similar material in the Australian exhibit?

A. That I couldn't say before the Australian Pavilion closed.

Q. What is that?

A. That I couldn't say before the Australian Pavilion closed. They might have come after my time.

Q. Did you know a person by the name of C. W. Chick, of the same location?

A. No, I can't place him.

Q. Did you know a person by the name of I. G. Cousen, of the same location?

A. I. G. Cousen?

Q. Yes.

A. No. It is very hazy. I can't remember it, sir.

Q. Was there an exhibit there by the Department of Mines, of Brisbane, Queensland?

A. Yes.

Q. You remember that, do you?

A. That is where my exhibit was; that was my exhibit. I had all the gems in there.

Q. You had all the gems in there?

A. In the Queensland exhibit, yes.

Q. In the Department of Mines?

A. Under the Department of Mines, yes.

Q. I will read the different items that were exhibited by the Department of Mines, and I will ask you to identify what were yours. First is antimonite—was that yours?

A. No.

Q. The next was limestone—was that yours?

A. No.

Q. The next was copper ores?

A. No.

Q. The next was coal?

A. No.

Q. The next was chromite?

A. No.

Q. The next was pottery and fire clay?

A. No.

Q. The next was coke?

A. No.

Q. The next was gold ores?

A. No.

Q. The next was graphite?

A. No.

Q. The next was iron ores?

A. No.
Q. The next was magnesite?
A. No.
Q. The next was manganese ore?
A. No.
Q. The next was molybdenite?
A. No. Mine were only gems.
Q. I have not finished. The next was molybdenite?
A. No.
Q. The next was wolfram?
A. No.
Q. The next was tin ores and tin ingots?
A. No.
Q. The next was silver-lead-zinc ores?
A. No.
Q. The next was bismuth ores?
A. No. That might have been taken after I left the Exposition—that list.

Mr. Meyberg: He has not asked you that, Mr. Heiser.

A. I beg your pardon.

Mr. Samuels: Q. I will show you this catalog, and I have referred to page 31 thereof, and ask you whether or not you can observe—and I am showing you the particularization of the various items exhibited by the Department of Mines—any item which was of the character of your jewels or material.

(Catalog exhibited to witness.)

A. No, I can't see anything there.

Mr. Meyberg: May I see the book, please?

Mr. Samuels: Certainly.

(Catalog handed to Mr. Meyberg.)

Mr. Samuels: Q. Do you still think, then, that your exhibit was a portion of the Department of Mines' exhibit?

A. Yes, sir.
Q. How do you explain that?
A. Well, Percy Marks—

Mr. Meyberg: Just a minute. May I ask you, Mr. Samuels—

A. That is not precious metals.

Mr. Meyberg: Just a minute. The heading on the page that you showed the witness—of course, this book was not displayed to me before it was read by you, or before it was shown to the witness—

Mr. Samuels: That is correct.

Mr. Meyberg: But over the names that you read it says, "Foreign Governments, Department of Mines and Metallurgy."

Mr. Samuels: You are looking at "Minerals and Stones and their utilization."

Mr. Meyberg: Group 153.

Mr. Samuels: I am coming to that. I am going to give you every group of gems on the subject before I get finished. We will introduce the entire feature of that in the record.

Mr. Meyberg: Now, don't take any advantage of the witness.

Mr. Samuels: Don't say that to me, Mr. Meyberg.

Mr. Meyberg: Let me finish the statement. I am sure you are not intentionally doing that, but nevertheless it can be done wholly without your intention. You are showing the witness page 31 of a book from the Mechanics Mercantile Library called "Panama-Pacific International Exposition, Official Catalogue of Exhibitors."

Mr. Samuels: I am showing him this portion (indicating). Here you will find the official catalog (indicating). The rest of it is not pertinent to this issue at all. It is purely historical and descriptive.

I will ask another question.

Mr. Meyberg: You go ahead while I take a look at this catalog.

Mr. Samuels: I will ask this question.

Q. You saw that catalog, did you not, on sale at the Exposition?

A. This catalog?

Q. A catalog of the exhibitors at the Exposition?

A. I couldn't recollect.

Q. You couldn't recollect that?

A. No.

Q. Do you recollect whether or not your name appeared anywhere in a catalog of the exhibitors displaying wares at the Exposition?

A. The best recollection I have of that, sir, is that the Australian Government took moving pictures of the gem cutting at that Exposition, and my stand and my men were all taken in the movie cutting gems, and it was displayed at the Australian Pavilion in the Queensland exhibit.

Mr. Samuels: I move the answer be stricken as non-responsive.

A. It was displayed all over Australasia.

Mr. Samuels: Just a moment, if you will, please. I move that answer be stricken as non-responsive. Mr. Reporter, I will ask you to repeat the question to the witness, and I will ask you to answer the question, Mr. Heiser.

(Pending question read as follows:

"Q. Do you recollect whether or not your name appeared anywhere in a catalog of the exhibitors displaying wares at the Exposition?")

A. No, I don't know.

Mr. Meyberg: You can go right ahead.

Mr. Samuels: No, I want to finish this. You certainly have a right to examine the book and look at it. We will reproduce the portion of the catalog in the record which specifies the exhibitors in the Australian Pavilion.

Q. Did you have to pay, or did you pay in connection with your space for your operations therein or your exhibit—

A. No.

Mr. Samuels: One moment, please, until I complete the question.

Q. (Continuing:) Did you have to pay any consideration to the Exposition Company or any percentage of your sales?

A. I can't recollect now.

Q. You have no recollection of that at all?

A. No, sir.

Q. You sold, did you not, to the general public at the Exposition—

A. Yes, sir.

Q. (Continuing): —some of the stones which were on exhibit there at your stand?

A. Yes, sir.

Q. That was one of the purposes of your occupying or operating your stand, is that correct?

A. Yes.

Mr. Samuels: Did you get the witness' answer, Mr. Reporter?

(Record read.)

Q. Do you know the extent of your sales during the period of time that you were there—of course, approximately?

A. No, sir.

Q. You cannot state within any limits at all?

A. No, sir.

Q. Whether they were $1,000.00 in the aggregate, or more or less?

A. No, sir.

Q. You can't answer that?

A. No, sir.

Q. How many months would you say you were operating there?

A. I couldn't recollect today, sir.

Q. Three months?

A. I couldn't say.

Q Do you know how long the Exposition was open?

A. For sure, no.

Q. What is your best recollection on the subject?

A. I couldn't say.

Q. You have no recollection at all?

A. Not on that, no.

Q. Were you at the Exposition and at this stand more than a month?

A. Oh, I think so.

Q. You only think so? You have no certain knowledge of that?

A. No, I am not sure.

Q. What is your best belief as to that—was it two months?

A. I couldn't say, sir.

Q. You have no belief on the subject at all?

A. I am not sure.

* * * * *

Mr. Samuels: Q. Did you know a man by the name of D. Emonson, of Rubyvale, Queensland?

A. No, I don't know him.

Q. Did you know a firm by the name of Frasers, Ltd., of Brisbane, Queensland?

A. I have a recollection of Frasers, yes They were exhibiting their exhibit, I think.

Q. What did they exhibit according to your recollection?

A. Opals, sapphires, or zircons. I am not positive on that. I think it was opals, sapphires and zircons.

Q. Frasers, Ltd. is a very large firm, is it not?

A. No.

Q. It was a small firm?

A. Yes. It was a retail store.

Q. What?

A. It was a retail store.

Q. It was a retail store?

A. Yes, sir.

Q. And by comparison with your exhibit Frasers, Ltd., was smaller?

A. It was just a little showcase.

Q. It was just a little show-case?

A. That is according to the best of my knowledge.

Q. And do you recall where in this Australian Pavilion Frasers, Ltd. was located by relation to yours—the exhibit or the space?

A. No, I couldn't exactly tell you, sir.

Q. Did you know a person by the name of A. Holland, of Rubyvale, Queensland?

A. No, I don't think so.

Q. Did you know a person by the name of T. Holland, of Sapphiretown, Queensland?

A. No, I don't know any one by that name.

Q. Did you know a person by the name of W. Holland, of Sapphiretown, Queensland?

A. No, I don't remember those men.

Q. Did you know a person—

A. If I knew them I wouldn't remember it now. I don't remember knowing them.

Q. Did you know Percy Marks, of Sydney, New South Wales?

A. Yes, I knew him personally.

Q. How large an operator was he?

A. Quite a big man.

Q. Did he have an exhibit at the Exposition?

A. Yes, but it was under bond; it was a bonded exhibit.

Q. What do you mean by that?

A. He was not allowed to sell there.

Q. I understand—

A. And if I may say—

Mr. Samuels: No. I think you have answered the question.

A. I beg your pardon.

Mr. Samuels: Unless you have some explanation to make.

A. When you read to me the men from Sapphiretown, Queensland, I don't think those men were here. I think they were men who just sent samples in for sale. I don't think any of those men were here or I would have remembered their names. They might have sent a bag of sapphires of one ounce, two ounces, or five ounces.

Mr. Meyberg: Exhibits under glass?

A. Yes.

Mr. Samuels: Q. Did you not observe the names of individuals in proximity to or within the space of the Australian exhibits?

A. I wouldn't recollect that now, sir.

Q. But they were not posted?

A. That I couldn't say, sir.

Q. You can't say that?

A. No.

Q. What did Marks display?

A. Opals and zircons, and I think he had some sapphires, too. I am not positive whether he had sapphires, but he had opals and zircons.

Q. Cut or rough?

A. Both, but he had very few rough. The majority were cut, if I remember correctly, but I couldn't say for sure now, Mr. Samuels.

Q. Incidentally were any of your gems cut when they came here, or were they in the rough?

A. Those that were shipped by the Queensland people were all rough, and I brought a little parcel in of cut stones, but I couldn't tell you what size, but the custom people have a record on that. I paid the custom on it.

Q. On the cut stones?

A. Yes, but it was only a little bit of stuff, sir.

Q. By "little bit," what do you mean?

A. Oh, two or three hundred carats—just samples—because we had the stones and we cut it from there.

Q. Are you willing that the records of the Custom House be made available to us for examination?

* * * * *

Mr. Samuels: Q. How much space did Percy Marks have at the Australian Pavilion?

A. Several show-cases. I couldn't tell you the exact amount.

Q. Simply a show-case?

A. Several show-cases.

Q. Several show-cases?

A. Yes, sir.

Q. Did you know the firm of O. McIntyre & N. Flynn, of Rubyvale, Queensland?

A. No.

Q. Did you know a man by the name of W. Moran, of Sapphiretown, Queensland?

A. No, I can't recollect having known him.

Q. Did you know a man by the name of L. Newsome, of the same location?

A. No, I can't recollect him.

Q. Did you know a man by the name of J. S. Nisbet, of the same location?

A. Recollect him from where? Where would I recollect him from?

Q. When I say that I mean Sapphiretown, Queensland.

A. The name is familiar to me, but I just can't recall him, Mr. Samuels.

Q. Do you know what product he dealt in?

A. No, I couldn't say now. The name is familiar.

Q. For your information he dealt in sapphires, cut and rough. Does that refresh your recollection?

A. No.

Q. Did you know a man by the name of J. Peterson, of the same location?

A. No.

Q. Did you know a man by the name of D. Sheppard, of the same location?

A. No.

* * * * *

Q. Has "The Story of the Panama-Pacific International Exposition", by "Frank Morton Todd", come to your attention, Mr. Heiser?

A. I have never seen it, I don't think, Mr. Samuels.

Q. I am referring to what is designated on the title page of Volume III, "The Story of the Exposition, being the official history of the International celebration held at San Francisco in 1915 to commemorate the discovery of the Pacific Ocean and the construction of the Panama Canal," by Frank Morton Todd, in five volumes. The volume I am about to read from being Volume III, published for the Panama-Pacific International Exposition Company.

* * * * *

Q. To refresh your recollection, Mr. Heiser—would you like to see a portion of this exhibit, Mr. Meyberg? It is rather interesting—I am reading from the bottom of page 250. After referring to the mineral exhibits, naming them, it is stated:

"This profusion went beyond metals. There were diamonds, rubies, sapphires, garnets, zircons, and opals; and the opal was there in its glory, from Lightning Ridge and Whitecliffs in New South Wales. There was $64,000 worth of it, and apparently $64,000 will buy quite a few opals in Australia. They were in all shades of this changing and beautifully variegated gem, and in sizes large enough for harness ornaments; light orientals, and magnificent big, black and crimson stones of a darkly burning luster. And some had superstitions attached which gave them added value—advertising value. People reveled in the sight of them and bought them plentifully."

Now, with that before you, is it not the fact that other exhibitors of opals and sapphires sold to the public in the Australian Pavilion their wares on display?

A. I didn't know what happened after I left, sir.

Q. I am talking about the period of time that you were there?

Mr. Meyberg: What is the question?

Mr. Samuels: Read the question to the witness.

(Pending question read.)

A. That doesn't say when they were sold—that which you read to me doesn't say when they were sold, sir.

Mr. Samuels: I didn't ask you that. I ask that the answer go out as non-responsive.

Q. All I asked you was whether or not during the time you were exhibiting—

Mr. Meyberg: He is asking you whether or not anybody else sold opals while you were there?

A. I don't think that anybody else was selling opals while I was there.

Mr. Samuels: Q. You say you don't think or you don't know?

A. I don't know whether anyone else was selling them or not, no, sir.

Q. You can't state with positiveness, can you?

A. No, sir.

Q. Do you know who the Australian Commission was composed of which was present at the Panama-Pacific International Exposition?

A. No, I do not.

Q. Could you mention any one of that Commission?

A. No, sir.

Q. Not one?

A. No, sir.

Q. Now, do I understand from you that all of the material which was shipped from Australia was located by you in your space at the Australian Pavilion?

Mr. Meyberg: May I have that question read?

(Pending question read.)

Mr. Meyberg: Do you understand that question, Mr. Heiser?

A. No, I do not.

Mr. Meyberg: Read it again, Mr. Reporter.

Mr. Samuels: If it is not clear I will seek to clarify it.

(Pending question re-read.)

Mr. Samuels: I will clarify that. I think it is somewhat involved.

Q. Did you keep in your space in the Australian Pavilion, the various shipments of material which were consigned to you immediately before and possibly one or two days after the opening of the Exposition?

A. I couldn't recollect for sure, sir.

Q. Don't you know whether you kept or stored any portion of that material elsewhere during the years 1914 and 1915, or 1915?

A. No, I can't recollect now, sir.

Q. Then it is possible that you had some three tons of material on display or within the area of your space in the Australian Pavilion during the time that you were there?

A. I had it in San Francisco, but I don't know where it all was, sir; I couldn't tell you.

Q. I am asking you at the present time with respect to the Australian Pavilion.

A. That I couldn't say for sure where it was stored.

Q. Was any of your material insured in transit or after arrival in San Francisco?

A. Which material do you mean, sir?

Q. The material which came immediately prior to the opening of the Exposition, and possibly some of it directly following the opening of the Exposition.

A. That I am not sure of, sir.

Q. Did the Queensland Government insure it?

A. That I am not sure of.

Q. You don't know whether you did, or not?

A. I couldn't recollect now.

Q. You could not recollect it?

A. No.

Q. Was it insured by you while it was on display in your space at the Pavilion or stored elsewhere?

A. I haven't any recollection, sir, on that.

Q. Who paid, if you know, the freight for these various shipments of the material we were just referring to?

A. What freight do you mean—from Australia across?

Q. That is the freight I refer to.

A. That was done by the Queensland Government.

Q. That was done by the Queensland Government?

A. I think so, yes. Pardon me. Or by some agency. I didn't pay for it. It was shipped over.

Q. You did not pay for it?

A. No. So I don't really know who paid for it.

Q. Did you have any agreement in writing with the Queensland Government with respect to this material?

A. I have forgotten now.

Q. You have forgotten?

A. Yes, sir.

Q. Was there any agreement between any official of the Government or the Government that it would pay the freight?

A. Well, I can't recollect now, sir.

Q. You can't recollect that?

A. No, sir.

Q. Where was this material located or stored in Australia at the time immediately prior to shipment?

A. Oh, I couldn't start to remember the names of the different places, sir.

Q. Do you mean that the material was shipped from various locations by the Government—various locations, of course, in Australia?

A. I couldn't give you the exact places of shipment.

Mr. Samuels: I didn't ask you that. I ask that the last answer be stricken as non-responsive, and the question read again to the witness.

(Pending question read.)

A. I couldn't recollect, sir.

Q. You can't recollect that?

A. No.

* * * * * *

Q. Your exhibit was in the Australian Building where Percy Marks had his exhibit?

A. Mr. Marks had several exhibits.

Q. Did he have an exhibit in the building where you were?

A. He had one in the Australian Building, and he had two other exhibits in this city I understand.

Q. I am talking within the Exposition. You do not mean to tell me, do you, Mr. Heiser, that Percy Marks had an exhibit of opals, rare black and light harlequin, cut and rough, precious and semi-precious gems, gold, at any building in the Exposition other than the Australian Building?

A. I think he had, sir.

Q. You say you think. Do you know?

A. I think he had one in the Metallurgy Building besides the Australian Building.

Q. Don't you know that this is headed "Mines and Metallurgy", and that these are gems in the building referred to?

A. The gems I don't think came under that department, sir; they came under a different department, sir, in the Australian Building.

Q. How about Frasers, Ltd.?

A. Frasers, Ltd.?

Q. Yes.

A. There was no Frasers, Ltd. over here. They just sent a few stones over. That would come under the Metallurgy.

Mr. Samuels: I didn't ask you that.

Q. Was that in the same building where you had your exhibit?

A. I am not sure, as I said before.

Q. You are not sure?

A. No.

Q. Do you know of any exhibit of gems of the character which we have been discussing, and which you handled—Australian gems—in any building outside of the Australian Pavilion?

A. Yes, sir

Q. Where?

A. I don't know exactly which building it was. Mr. Phillip Cline and Mr. Shore, from New York, had Australian gems also; two different exhibitors.

Q. Were those gems brought from the United States?

A. No, I think they were brought from Australia.

Q. I mean were the individuals residents of the United States, or were they residents of Australia—the exhibitors?

A. That I don't know.

Q. Don't you know that the Australian Pavilion was limited to Australian residents?

A. You didn't ask me that. You said in any other building.

Q. I am talking about Australian operators.

A. Pardon me. You asked me—

. . . . . .

Mr. Samuels: Q. Do you know of any Australian person, firm or partnership owning gems which originated in Australia at the time of their shipment for the Exposition—

A. There was a man who came—

Mr. Samuels: Pardon me. I haven't finished my question.

A. Excuse me.

Q. (Continuing:) —who displayed either personally or by the name of the person, firm or corporation his product, or their product, in any other Australian pavilion?

A. Yes.

Q. Who?

A. Cline and Shore.

Q. Was Cline a resident of Australia, or did his products come from New York?

A. There was another man. I beg your pardon. Brady.

Q. Brady?

A. Brady was his name, yes.

Q. He lived in Australia?

A. Yes.

Q. And conducted business there?

A. Yes, sir; he was born and raised there. Oh, no; he may not have been born there.

Q. He had no branch in the United States?

A. No, sir.

Q. He had a display of what at the Exposition?

A. He displayed opals and sapphires—Australian gems.

Q. Opals and sapphires—Australian gems?

A. Yes, sir.

Q. And displayed them where?

A. He displayed them with Mr. Shore, and displayed them with a Mr. Cline.

Q. Displayed them where—in what building?

A. I couldn't say which building it was; I can't recollect, sir.

* * * * *

(Trereupon an adjournment was taken until 2:00 o'clock P. M., Tuesday, August 26th, 1941, and by consent of counsel to be resumed at the same place.)

Room 1700, 333 Montgomery Street, San Francisco, California, Tuesday, August 26th, 1941, 2:30 P. M.

* * * * *

Mr. Samuels: Q. You referred to the fact that you received in the various shipments these several tons. Can you state with more accuracy the amount other than by stating simply "several tons"?

A. Oh, I should think it was around—no, I couldn't say the exact amount, but I should say—

Q. I do not mean specifically.

A. I should say considerably over four tons.

Q. Considerably over four tons?

A. Yes.

Q. I understand you were cutting and polishing some of the rough material, is that correct?

A. Yes, sir.

Q. And was anybody else cutting and polishing?

A. Yes, there were three and four men cutting and polishing up there with me.

Q. Now, when you discontinued the occupation of this space in the Pavilion, and necessarily the exhibit, did you have any material left?

A. Oh, yes, a terrible lot—the greatest bulk of it.

Q. What did you do with it?

A. Oh, I moved some of it to different banks and different vaults here, sir, and different places.

Q. What banks, and what vaults, and what places?

* * * * *

A. Some of it was at the Wells Fargo Bank, and some we shipped; some I had in my home, I think, where I was staying; the cheaper material we stored.

Mr. Samuels: Q. At your home?

A. The cheaper material we stored, and the better material we had in the Wells Fargo Bank. Now, I do not know exactly how long a time it was that we had it there.

* * * * *

Mr. Meyberg: Well, were there other places that you had this material besides that? He wants to know all places where you had that material at that time.

A. We had the cheaper material in the warehouse, but I can't recollect now what place it was, and the better stuff was in the Wells Fargo Bank, and I think there was another bank that we put it in; I am not sure whether it was the French Bank—I think we had it in the French Bank; we had some of it in the French Bank for a while.

Mr. Samuels: Q. Who are "we"?

A. Myself.

Mr. Samuels: Is there anything further you want to state on that subject?

A. I can't recollect. There was another place, but I can't recollect where it was, Mr. Samuels, now.

Q. Reverting—and I am sorry I overlooked this in my conversation with Mr. Meyberg, who diverted my attention from something which I wanted to bring to your attention with respect to your representation of the Government: Did you at that time know a gentleman by the name of D. B. Edward, of Australia?

A. Edward?

Q. Yes.

A. The name seems familiar, but I can't recollect it now, sir.

Q. Do you know whether he was here in any capacity representing Australia at the Exposition?

A. That I couldn't recollect, sir.

Q. Did you ever come in contact with him so far as you know?

A. The name is familiar with me, yet I can't recollect it, sir. You know, twenty-five years ago is a long time to recall a gentleman's name.

Q. If you were told that Mr. Edward was the executive secretary of the Australian Pavilion at the Panama-Pacific Exposition, would that refresh your recollection?

A. No, sir.

Q. It would not?

A. Not at this particular time.

Q. Did you know a gentleman by the name of James Campbell?

A. Campbell?

Q. Yes.

A. He was the Commissioner, wasn't he—the Australian Commissioner here? I am not positive; I can't say for sure, no, sir; I can't remember. There was a Mr. Campbell, though, but I think he was the Commissioner over here, wasn't he?

Q. Was he the official representative of the Queensland Government at the Exposition?

A. That I couldn't say, sir. I can't remember back so far, but the name seems familiar. It is like you asked me all those questions as to the exhibitors—

Mr. Samuels: Don't argue with me.

A. I am not arguing with you. I am trying to tell you.

Mr. Samuels: You do not have to argue with me. That is not an explanation. You are simply unable to recall, isn't that right?

A. Yes, sir.

* * * * *

Q. If it were brought to your attention that Mr. Edward, regarding whom I inquired whether you had knowledge of, asserted that you had no official connection with the Government or with any of the Australian states in connection with Australia's representation at the San Francisco Exposition, would that refresh your recollection on the subject?

A. No.

* * * * *

Q. Do you know who the under-secretary of Mines of Queensland is?

A. Not now I couldn't tell you.

Q. Do you know who the Government geologist of the State of New South Wales is?

A. No. Is there only one?

Q. Do you know who the Government geologist of New South Wales is?

A. Is there only one?

Q. So far as I know.

A. There must be fifty Government geologists.

Q. For the different states?

A. No, you are talking of New South Wales, aren't you?

Mr. Samuels: Yes.

A. There must be at least fifty of them, including understudies.

Q. Do you know Mr. Leo Jones?

A. No.

Q. In your exhibit at the Australian Pavilion in the Exposition grounds, did you claim to have any official standing so far as the Government of Australia is concerned?

A. No, sir.

* * * * *

Q. I refer to page 234 of the transcript of the testimony given by you in action No. 7,256-C-Law, pending in the Dis-

trict Court of the United States, for the Southern District of California, Central Division, before Honorable Cosgrave, upon the hearing of revaluation.

* * * * *

Q. At the top of the page, line 1, you were asked this question, or these questions, and you gave these answers— the questions were by Mr. Peterson:

"Q. Did the material described in your complaint leave Australia for the United States from the same port?

"A. That I am not sure, sir.

"Q. Did it arrive here in one shipment?

"A. That I am not sure of, either."

* * * * *

Mr. Samuels: Q. You remember those questions being asked you, and your answering them that way, do you not?

A. Which questions?

Q. The two questions I just read to you, and the two answers I just read to you.

A. Out of this book, sir?

Mr. Samuels: Let me read this question:

"Q. But you had it sent, didn't you?"

That is the material described in your complaint in that action.

"A. Pardon me, if I may, Your Worship, tell you the way it was shipped. The Queensland government had me come to represent them, and that material was all shipped as an exhibit by the government at the Panama Exposition. I think it came over in several different shipments because of the different exhibits."

Do you remember so testifying?

A. That was about two years ago. Yes, I think I testified to that, sir.

Q. Then did you come over from the Queensland Government, or did it have you represent it?

A. I beg your pardon?

Q. Did the Queensland Government have you represent it?

A. No, the Queensland Government shipped my material

free and clear as I told you this morning, and gave me the space and access to the building, and power and light to demonstrate a gem exhibit at the Exposition for which they shipped my material for me.

Q. The material was all shipped as an exhibit for the Government, wasn't it?

A. No, the Government shipped it for me, and I was to exhibit it, and the arrangements were that I was to have free access to it, and to be able to dispose of it, cut it and sell it, and make a general demonstration of it.

Q. Then I understand you were not a representative of the Government, nor was it a Government exhibit?

A. I was an independent exhibitor, but the Government sent it over. I wouldn't take the responsibility unless they shipped my stuff for me.

Q. Now, then, I am referring to a history of M. E. Heiser, "Defendant's Exhibit 1." You were the applicant in the matter of the investigation and examination of International Gems before the Department of Investment, Division of Corporations of the State of California, No. 65,704 L. A., held before Assistant Commissioner Thomas J. Kelley, and I will show you that history. It occupies—it covers, rather, one, two, three pages—is that correct, Mr. Meyberg?

(Document exhibited to Mr. Meyberg.)

Q. (Continuing:) —and I will ask you to examine it, Mr. Heiser, and state whether or not you furnished the information appearing in that exhibit?

(Document thereafter handed to the witness.)

A. Yes. I think Mr. Goldman—

Mr. Meyberg: Have you seen that before? Do you know anything about it?

A. No.

Mr. Meyberg: That is all he is asking you. Now, listen to the question.

Mr. Samuels: Will you read the question to the witness, kindly, Mr. Hart?

(Pending question read.)

Mr. Meyberg: Now, you can answer that question.

A. Yes.

Mr. Samuels: Q. Did you furnish that information?

A. Yes, sir.

Mr. Meyberg: Q. Do you know?

A. I am not positive, but I think I did.

Mr. Samuels: First you said "Yes," and then upon the inquiry of your counsel you say you are not positive, but you think you did. Isn't it a fact that you furnished that information?

A. I think I did.

Mr. Samuels: All right. You think you did. You are not certain.

Q. Can you tell me where Mr. Goldman, your then attorney, would procure that data aside from you?

A. Well, I might have given some of these papers to the Standard Oil, and they might have gotten it through Mr. Klinker, or some one like that.

Mr. Samuels: We ask to strike out the witness' answer that he might have done this, or he might have done that, as speculative and not admissible.

Q. According to your best recollection wasn't this data furnished by you?

A. It could have been.

Q. I will ask you to answer directly, and not what could have been. Isn't it correct according to your best recollection that the data was furnished by you?

A. According to my best recollection I can't recollect a thing about it today.

Q. Do you know when this occurred?

A. The exact time? No, I don't.

Q. Do you know what year it was?

A. No. What year was it?

Q. You don't remember the year?

A. No.

Q. I will tell you the year. The application was filed June

16th, 1937, with the Corporation Commissioner for a permit to issue stock.

A. That was four years ago.

Q. You were present at the various sessions there, were you not?

A. Yes, sir, I was present.

Q. At the sessions before the Corporation Commissioner?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Mr. Meyberg: Now, what do you mean by various sessions?

Mr. Samuels: There were a number of them.

Mr. Meyberg: Was he present at all of them? I wasn't there.

Mr. Samuels: I know you weren't.

Mr. Meyberg: I don't know anything about it.

Mr. Samuels: Q. Have you any recollection of being present at the time when your counsel—which is the fact—offered in evidence this history of M. E. Heiser, so designated?

A. He offered certain papers in evidence, but I don't know what they were; I did not read them before he put them in evidence; I couldn't say for sure.

Mr. Samuels: All right. We do not have to pursue that farther.

Q. Did you give him the date of your birth?

A. I think he got it.

Mr. Samuels: Q. Is the date of your birth appearing in this history correct?

A. The year is. There is no date on there at all?

Q. That is a date.

A. Yes, that is correct.

Q. That is correct?

A. Yes.

Q. Is it correct that you were taken to Australia when five months old, and arrived there at nine months old; edu-

cated in Australia and England; instructed in mining by Professor Robert Taylor?

A. Yes.

Q. All right. Now, then, I call your attention to this statement in this exhibit denominated "History of M. E. Heiser": "In 1913-1914, controlled the Queensland opals and represented the Government of that state at the Panama Pacific International Exposition, San Francisco, California. In 1915, as their gem and gold representative." Is that true or correct?

A. Well, I don't know whether I put that in there, or not, sir.

Q. I didn't ask you that—I didn't ask you whether you put it in there at all. I asked you whether it was true.

A. It is true that I was over here demonstrating Australian gems in the Australian Building.

Mr. Samuels: I will take it piecemeal, then.

Q. Is it true or untrue that you represented the Government of that State, Queensland, at the Panama-Pacific International Exposition, San Francisco, California?

A. Well, I represented the gems from the State of Queensland at the Panama-Pacific International Exposition.

Mr. Samuels: I ask that go out as non-responsive, and I insist upon the witness answering the question. You know the question. Repeat that question to the witness, kindly, Mr. Reporter.

(Pending question read.)

A. Well, I represented them, and I didn't represent them—you can take it either way, sir—because the Government shipped my merchandise over here with the idea of me making the representation. I wouldn't represent them because I would be in bond, and so as to have freedom to sell my merchandise I came as an individual. Now, it is a technical question whether I represented them, or not. Some might say I represented them, and others might say I didn't represent them. That would be a matter of opinion.

Mr. Samuels: I ask that answer be stricken as purely argumentative, and not responsive to the question.

Q. Did you represent the Government of Queensland at the Panama-Pacific International Exposition?

A. As their representative?

Q. As their representative. That is the language. That is all I asked you.

A. As their representative, no, but as a representative of the gems, yes.

* * * * *

Q. Now, returning to the question of storage of the material, which has been identified, upon your discontinuance of your exhibit at the Exposition: You say some of the cheaper material was stored you believe in a warehouse?

A. Yes, I think we stored the industrial stuff and the cheaper stuff in the same warehouse somewhere.

Q. Do you know the name of the warehouse, or where it was located?

A. No, I couldn't say.

Q. When you say "cheaper"—was there a quantity of it stored there?

A. I couldn't tell you right offhand, sir.

Q. You couldn't give me any approximation at all?

A. No.

Q. You couldn't say whether it was a thousand ounces or two tons?

A. No.

* * * * *

Q. Did you state, Mr. Heiser, that some of the cheaper industrial material was stored at your home at that time?

A. I said I wasn't sure where it was stored. It was stored in a warehouse—I am not sure where it was stored.

Q. Where was your home at that time?

A. I couldn't tell you where it was at that particular period.

Q. Did you have a home of your own then?

A. I was living in an apartment.

Q. You were living in an apartment?

A. Yes.

Q. Then you know the name of the apartment, do you not?

A. I couldn't recollect now. I travel around a lot.

Q. You couldn't recollect at all?

A. No, sir. That was twenty-five years ago.

Q. All right.

A. And I have been all over the world since then.

Q. Now, was there any other place where any of the industrial material was stored according to your best recollection at that time?

A. No, I can't recall where it was stored, sir.

Q. Now, was there any of the industrial material stored at any one of the banks in San Francisco, or elsewhere, at that time—I mean stored by you at that time, Mr. Heiser?

A. I don't think so. We wouldn't have stored industrial material in a bank.

Q. You would not?

A. No.

Q. So your best judgment is that none was stored there, is that correct?

A. That is right, sir.

Q. Now, what type of material did you store in the vault of any bank—at that time. Of course, I am speaking of you particularly.

A. Rough sapphires, zircons, and stones of more valuable nature.

Q. Do you know the quantity that you had to store at that time?

A. No, I couldn't say offhand.

Q. You couldn't approximate the quantity at all?

A. Not offhand I couldn't say, no, sir.

Q. But you do definitely recollect that you stored some of the more valuable material—. I suppose it is commercial material, is that right?

A. Gem material.

Q. Gem material we will refer to it as. You stored it in the Wells Fargo Bank?

A. Yes, I had some in the Wells Fargo Bank.

Mr. Meyberg: What was that answer?

A. Yes, I had some in the Wells Fargo Bank.

Mr. Samuels: Q. Was it in a safety deposit box?

A. No, it was in a big—in a large box—in several large trunks—specially made trunks—wooden boxes like.

Q. Wooden boxes?

A. Yes.

Q. The gem material?

A. Yes.

Q. In the Wells Fargo Bank, is that correct?

A. Yes, sir.

Q. And now you are positive on that subject?

A. It was twenty-five years ago. As near as I can be positive, yes, sir.

Q. Did you place a valuation upon it?

A. No, they were all sealed contents under bond. That is the way we used to sign for them in the bank, if I remember correctly. We used to sign a receipt for sealed box, contents unknown.

Q. Did you insure it at that time?

A. I am not sure.

Q. Do you know the rental you paid for that storage?

A. I don't think so. No, I haven't the slightest idea.

Q. You couldn't say whether it was one dollar a month, or twenty dollars a month?

A. No, sir. I talked it over with a gentleman. I think it was Mr. Lippman. He is now dead.

Q. Mr. Lippman is not dead.

A. I forget the name of the gentleman. I had a letter to the old gentleman. I was a stranger here, and he made me kind of a special rate on this room. It was a room as you went into the vault behind the main, big door; it was in a large room.

Q. How many boxes would you say you had stored there according to the best of your recollection?

A. I couldn't say for sure, really.

Q. More than one?

A. Oh, yes.

Q. More than five?

A. Oh, I think I had that many, because I had opals and sapphires. At least I had one, and then I had another—I would consider I had more than three stored there. Oh, I couldn't tell you exactly. It was twenty-five years ago. It is impossible for me to remember so well.

Mr. Samuels: Off the record, please.

(Off the record.)

Q. Will you state to the best of your recollection the size of these several boxes which were stored by you in the open vault space of the Wells Fargo Bank?

A. Well, I would say one of the boxes was about like that table there, and about that deep. (Witness indicating.)

Q. By "like that table," what dimension do you mean?

A. Like across there. (Indicating.) Not quite as large as across there. From where that bowl is to across here. (Witness indicating.)

Mr. Meyberg: About two and a half feet long and a foot and a half high.

Mr. Samuels: Q. You mean two and a half feet from here to here? (Indicating.)

A. Yes.

Mr. Samuels: Let us take a ruler and get it.

Mr. Meyberg: Q. Do you remember the size of the box?

A. No, I am only giving it to you approximately. It was as I say twenty-five years ago.

Mr. Samuels: We do not expect it in inches from you.

A. I will say two foot three inches by eighteen inches.

Q. The eighteen inches were the depth, is that right?

A. Yes. And then the other one was the trunk.

Q. The other one was a trunk?

A. A trunk.

Q. What kind of a trunk?

A. Possibly three foot six or three foot nine by about twenty inches by about twenty-four inches. I remember this because I still have got that trunk, and that is why I remember that particularly.

Q. And was there another box or another trunk?

A. There was a small tin trunk.

Q. A small tin trunk?

A. You know, galvanized iron trunk.

Q. What size would you say that was?

A. Oh, I would say about two foot nine by eighteen inches by about nine inches.

Q. And filled with these uncut stones, as you referred to them?

A. I generally carried opals in that.

Q. Opals in all three?

A. No, opals, sapphires and jades I had in that.

Mr. Meyberg: Q. You mean in the tin box?

A. In the tin box, yes.

Mr. Samuels: Q. Did you have at that time, or immediately following it, or preceding it, any safety deposit box in that bank?

A. Not to my recollection, sir.

Q. Did you ever have one there?

A. That I don't know, sir. I couldn't recollect.

Q. You don't know that? You don't recall that?

A. No, sir.

Q. Were these boxes and trunks—or, rather, one box and two trunks so far that you have referred to—was there anything else besides the box and the two trunks stored there at that time?

A. I am not sure, sir. There might have been, sir.

Q. Were they deposited in your name?

A. I think they would have been, but I couldn't say for sure.

Q. Do you know whether anybody else at that time had access to them?

A. I had a man helping me.

Q. No. I mean access for the purpose of removing them.

A. He used to go there and come for me and do business for me—a fellow named Goldworth. I got him through the British Consulate.

Mr. Samuels: Never mind that.

A. It comes back to me, now. He had access to go there. He used to take the stuff in for me.

Q. Are those all of the places you recall storing your material which we have discussed, in the City and County of San Francisco?

A. There were two other places I had stuff stored at that time, but I can't place where it was, Mr. Samuels; there were

two other places, but I can't recollect where they were. It may come back to me later on today, but I can't recollect it now.

Q. You have none of the receipts you received—

A. No, sir.

Q. (Continuing:) —from the bank or any other place of storage?

A. No. I tried to get some of them.

Q. Were these other places banks, or were they private houses?

A. No, they were warehouses.

Q. They were warehouses?

A. Not warehouses. I think they were banks. You know the bank vaultage where they charge you so much a month to put a trunk in, but I couldn't say where they were now.

Q. How long did the material which was stored in the Wells Fargo vault remain there, do you know?

A. No, I couldn't tell you the exact time, sir. I am not certain of that.

Q. Approximately?

A. No, I couldn't tell you the exact time.

Q. Did you withdraw it at any time?

A. Yes, I used to take stuff out and put it back; I was continuously moving around with material.

Q. These boxes, then, weren't bound, were they? I mean the one box wasn't nailed down, but it was inaccessible, is that right?

A. There was a padlock on it.

Q. The box had a padlock to it?

A. Yes, any of those things have locks on them, naturally.

Q. Did the material or any substantial portion of it remain there until 1928?

A. That I am not sure of. I had a hazy recollection that it was, and then again I tried to think about it after I was cross-examined in Los Angeles, and I am not sure what part of the time it was there, sir; I am not positive of it, because after all, you know, trying to think back such a long time a man can make a mistake so easily on that, but it was there for a long time, but the exact number of years I couldn't say. I believe we moved it from one branch of the Wells Fargo Bank to another branch.

Q. When you say you moved it to another branch of the Wells Fargo Bank, do you refer to the Union Trust Company?

A. Yes, I think I had one of the trunks stored there for a while, but it is awfully hazy to me.

Q. They were either in the Wells Fargo Bank or the Union Trust Company, which merged with the Wells Fargo Bank, is that right?

A. Yes; and then there were other bank vaults I had stuff in, but I can't place where they were, sir. I have been trying to think it out.

Q. Were you occupied in any manner after you discontinued your exhibit at the Panama-Pacific Exposition?

A. How do you mean, occupied, sir?

Q. Did you follow any trade or active livelihood?

A. Oh, I opened a gem cutting place at 208 Stockton Street, and I had one in the Lick Building for quite a while. I had the one on Stockton Street I think for about eighteen months after that; and I had one at 711 South Broadway, Los Angeles—I don't know the exact time, whether it was six months or nine months, sir; I can't remember the exact time.

Mr. Samuels: What places were those that he mentioned?

(Record read.)

A. That is right.

Q. And what were you doing cutting and polishing gems there?

A. Yes, sapphires and opals.

Q. And seeking to dispose of them, is that right?

A. Yes, sir.

Q. Retail?

A. Chiefly wholesale. I did very little retail business.

Q. You did very little retail business?

A. Yes. At the store on Stockton Street I did a little retail business, but the majority of the business was a wholesale business.

Q. Reverting one moment to the space you had in the Australian Pavilion while you were there at the Exposition, I am going to ask you this question: Is it not a fact, Mr. Heiser, that you were simply allowed to occupy a small space

in that pavilion in which was a bench at which you cut and polished certain gems?

A. No, it is not a fact.

Q. Did you have a safe deposit box in which any of your material, precious or otherwise, was stored following your termination of your exhibit at the Exposition—

A. How do you mean?

Q. (Continuing:) —in any bank other than the Wells-Fargo Bank in this city?

Mr. Meyberg: What is the question?

(Pending question read.)

Mr. Meyberg: You mean immediately following it, or from that time up to the present time?

Mr. Samuels: No. I will say during the period of two years subsequent to 1915.

A. Yes, I think I did, but I can't recall which one it was.

Mr. Meyberg: He hasn't asked you yet which one it was. Just listen to the questions.

Mr. Samuels: The answer was "Yes," is that correct?

A. Yes, sir.

Q. What bank was it?

A. I can't recall, sir.

Q. You can't recall?

A. No, sir.

Q. Did you store any of this material in any place during the period from 1915 until 1917 inclusive, outside of the City and County of San Francisco?

A. Did I store any stuff between 1916 and 1917?

Q. Between 1915, 1916 and 1917, outside of the City and County of San Francisco.

A. I had stuff in the East.

Q. I am talking about this material that came here.

A. Yes, I shipped stuff East; I shipped it all over the place.

Q. When did you ship it East?

A. I couldn't tell you the exact date. It was during the period of doing business, sir.

Q. During what period of doing business?
A. I couldn't tell you. That was twenty-five years ago.

Mr. Meyberg: Just a minute. Let him ask the questions, and you answer them.

Mr. Samuels: Q. Did you do that prior to 1917—ship any to New York?

A. Yes.
Q. You did?
A. Sure, I did, yes.
Q. Prior to 1917?
A. Yes.
Q. What did you ship, and where did you ship it?
A. I couldn't recollect now, sir.
Q. Do you know to what place you shipped it?
A. I have a recollection of shipping some to Buffalo, New York.
Q. What did you ship to Buffalo, New York?
A. Opals chiefly.
Q. What?
A. Opals.
Q. Rough material?
A. I couldn't tell you for sure what it was.
Q. If it was cut material would you ship it to New York?
A. Oh, yes.
Q. What was the reason for shipping cut opals to New York?
A. To sell it. People buy it there as well as out here.
Q. Did you have a representative there?
A. No. A man came here during the Fair. I think he came here with the Shriners' Convention, if I remember correctly.

Mr. Meyberg: Let us see what that question was. Let us have the question read.

(Pending question read.)

Mr. Meyberg: Now, would you answer that question?

A. There was a buyer.

Mr. Samuels: Q. Were you able to display them to the buyer?

A. No.

Q. Did anybody represent you there to display them to the buyer?

A. No.

Q. How did you display them to the buyer, then?

A. We just shipped them on a memorandum.

Q. You shipped some to a buyer?

A. Yes, sir.

Q. That wasn't for storage?

A. No.

Q. Did you make any other shipments during the time in question to the East? You said New York. We will say to New York State.

Mr. Meyberg: That is from 1915 to 1917?

Mr. Samuels: That is correct.

Mr. Meyberg: Do you understand that?

A. Yes.

Mr. Meyberg: He is asking you—

Mr. Samuels: He answered the question.

Mr. Meyberg: I think you asked if he remembered shipping any, and if so, to whom.

Mr. Samuels: For the purpose of storage.

A. I think I shipped a lot to Buffalo, New York.

Q. During what year of those three years—1915, 1916 or 1917?

A. I couldn't tell you exactly, but there was a Fair at Buffalo—there was an exhibition at Buffalo, New York, and they asked me to send an exhibit there.

Q. And did you attend the Fair?

A. I went there.

Q. What time did you go there?

A. Oh, I couldn't tell you the exact time now, sir. It just came back to me about the Fair.

(Recess.)

Q. You remained in this city, did you not, until your marriage, Mr. Heiser?

A. I am not sure. I think I went away several times.

Q. Do you mean on trips?

A. On business trips.

Q. I mean to the East, or any distance, or did you remain in the immediate vicinity of San Francisco?

A. I was out of the State. I went to Oregon.

Q. I mean an extended trip to the East.

A. Yes.

Q. You didn't make a trip to the East before your marriage, did you?

A. Yes, I think I did, sir. I am not sure, but I think I did. I am not positive about that.

* * * * *

Q. Now, calling your attention to page 239 of the testimony given by you in the action No. 7,256-C-Law, upon the revaluation—the hearing of the application for revaluation of the material which was the subject of the judgment procured by you in the District Court of the United States for the Southern District of California, Central Division—. I think that identifies that for your purpose, does it not, Mr. Meyberg?

Mr. Meyberg: What page?

Mr. Samuels: Page 239.

Q. This was a question by Mr. Peterson:

"Q. So, to pursue my inquiry, from the time that the stones arrived here in 1914, was it, or 1915?

"The Court: I think 1914.

"A. In the early part of 1914.

"Q. By Mr. Peterson: They have been here, so far as you know, ever since?

"The Court: What?

"Mr. Peterson: They have been here in America, so far as he knows, ever since?

"A. Yes."

Do you recall those questions being asked you, and your giving those answers?

Mr. Meyberg: Read that las. answer? They have been what?

Mr. Samuels: "They have been here in America, so far as he knows, ever since?"

And the witness answered, "Yes." That is America.

Mr. Meyberg: Well—

A. That didn't mean all of them. That is only talking about one specific lot of stones.

* * * * *

Mr. Samuels: Q. Do you recall that question being asked you, and do you recall giving that answer, Mr. Heiser?

A. I do not recall that answer, because there were so many questions and answers there, Mr. Samuels, as you must be aware of.

Mr. Samuels: We ask that the witness' statement or response outside of the portion, "I do not recall that answer" be stricken as non-responsive and argumentative.

Q. "Q. Where were these stones, Mr. Heiser, such as you have described in your complaint, from the close of the Exposition in 1915 down to 1928?"

Do you recall that question?

A. Yes, I recall that question.

Q. You recall that question?

Mr. Meyberg: Do you recall that question and answer?

A. I slightly recall it.

* * * * *

Q. Now, then, there was an objection to that as immaterial by Mr. Weyberg, who was then representing you; the objection was overruled, and this question was asked you by Mr. Peterson:

"Q. Where were they?"

And the record shows your answer:

"A. I think in the Wells Fargo Nevada Safe Deposit Company."

Do you remember that question, and do you remember your giving that answer?

A. I can't remember the exact question, Mr. Samuels. As I said before, there were so many questions that I could not remember them.

Q. Do you remember that answer?

A. No, I couldn't remember it exactly, sir.

Q. Does that refresh your recollection as to the retention of any portion of this material which you assert you stored with the Wells Fargo Bank?

A. No. I have a recollection that it was in the Wells Fargo Bank, but I couldn't tell you the exact time, it was so many years ago; and I don't think that all of that material was in the Wells Fargo Bank. I think the gem material was in the Wells Fargo Bank—I don't know whether it was a year or two years or three years; I couldn't say for sure. And then the other material was in one of the other vaults in storage, but I couldn't say exactly where.

Q. Pursuing the question:

"Q. In San Francisco?

"A. Yes, sir."

Do you remember that question, and do you remember that answer?

A. No, that exact question I couldn't remember. I was two days being examined.

Q. Was the answer, "I think in the Wells Fargo Nevada Safe Deposit Company" your best recollection at that time?

A. Well, it came to me that I had some of the material there, but I couldn't remember exactly how long.

Mr. Samuels: I asked you a direct question, and I ask the answer be striken as non-responsive and argumentative.

A. I said I thought it was there.

Mr. Samuels: One moment, if you will, kindly, and I will reform the question.

Mr. Meyberg: Just one moment.

Mr. Samuels: Q. Was that answer which I have read to you in response to Mr. Peterson's question your best recol-

lection of the location of the gems with respect to which he was inquiring?

Mr. Meyberg: At the time the answer was given, you mean?

Mr. Samuels: Yes, at the time the answer was given.

A. Yes, at the time it was my best recollection.

Q. Is it your best recollection now? Or rather, is it your recollection?

Strike out the word "now," Mr. Reporter.

A. My recollection now is that I had the stuff in the Wells Fargo Bank. I don't know whether it is the Wells Fargo Bank or Union Trust Company, but they are both the same. I had the stuff there over a period of years, and then I had some merchandise in one of the warehouses here, but I can't say exactly where it was. The industrial stuff I am speaking of.

Q. We are talking now of the material which was the subject matter of this action.

A. That is right.

Q. Which was brought by you in the United States District Court for the Southern District of California, Central Division, and for which you procured a judgment.

A. Yes.

Q. And the value of which was being reconsidered by the Court upon this hearing.

A. Yes.

Q. Now, with respect to that materia—. You know what material I am referring to, do you not?

A. Yes, sir.

Q. Is it your present recollection that it was stored in the Wells Fargo Nevada Safe Deposit Company, or was it the Union Trust Company vault?

A. Not all of it all of the time.

Q. Not all of it all of the time?

A. No. The gem material was for some part of the time, but the industrial material I do not think was ever in the Wells Fargo Bank to my recollection since then. That is the best of my recollection, sir.

Q. But some of the material that was in the box—

A. The gem material.

Q. The gem material which was in the box and the two trunks, is that correct?

Mr. Meyberg: What was the question?

Mr. Samuels: This is the material or a portion of the material which Mr. Heiser testified he stored in the Wells Fargo vault in a box, one large trunk and one small trunk. Is that correct?

Mr. Meyberg: What is the question?

Mr. Samuels: That is the question.

Mr. Meyberg: Is there a question there, Mr. Reporter? It sounds to me like a statement.

Mr. Samuels: The question is this: Is this a portion of that material? That is what he was asked.

(Record read.)

Mr. Meyberg: Do you understand that question, Mr. Heiser?

A. Yes, sir.

Mr. Meyberg: If you do understand it, you can answer it.

A. Yes, sir.

Mr. Samuels: Q. This was some of the material?

A. This was some of the material, yes, sir.

Q. Now, during the period that this gem material was stored in the Wells Fargo Bank by you did you return it to the Tax Collector of the City and County of San Francisco for assessment?

* * * * *

(Pending question read as follows:

"Q. Now, during the period that this gem material was stored in the Wells Fargo Bank by you did you return it to the Tax Collector of the City and County of San Francisco for assessment?")

A. I think on the advice of counsel I will refuse to answer that question.

Mr. Samuels: Your counsel hasn't so advised you.

Mr. Moyberg: Well, Mr. Heiser, you can state what the facts are, if you wish to, and we will save a little time here.

A. I don't have any recollection whether I did, or not, Mr. Samuels, to tell you the truth. You are asking me to go back twenty-five years on different matters that are very, very difficult to remember. Your associate just now couldn't recollect something you asked him to find in a book that he has been reading and that he has been pondering over for the last few days.

Mr. Samuels: I will ask that all of the witness' answer, outside of the fact that he doesn't recollect, be stricken on the ground it is argumentative and non-responsive—particularly that portion referring to my associate.

Will you read the last answer to me?

(Record read as follows:)

"A. I don't have any recollection whether I did, or not, Mr. Samuels, to tell you the truth. You are asking me to go back twenty-five years on different matters that are very, very difficult to remember.")

Mr. Samuels: The balance of the answer I ask be stricken on the ground assigned.

Q. Did you at any time between 1917 and 1928 return to the Tax Collector of the City and County of San Francisco for assessment any material, either mechanical or commercial, belonging to you and comprehending gems of the character which you have described?

A. I don't recollect, sir.

Q. You don't recollect that?

A. No, sir.

Q. Is it not a fact, Mr. Heiser, that at no time did you return any part of that material for assessment?

A. That I am not sure of, sir.

Q. Have you any recollection on the subject at all?

A. No, sir.

Q. Would it refresh your recollection if I told you that the records of the Tax-Collector of the City and County of San Francisco showed that during the time I have mentioned

from 1915 to 1928 there was no return of any material of personal property by you for assessment?

Mr. Meyberg: Just a minute. That is objected to as being purely argumentative—

* * * * *

Mr. Samuels: Q. To what extent, if you can recall, Mr. Heiser, did you withdraw whether for the purpose of sale or otherwise any of the material which you had stored in the Wells Fargo Bank, or in any other bank in the City and County of San Francisco, or in the warehouses you have referred to, or in any other place of storage in the City and County of San Francisco, between the time of creation of the storage and the year 1928?

A. I couldn't recall right offhand, sir.

Q. Did you withdraw any or all of the Wells Fargo Bank material?

A. Oh, yes, I moved a lot of stones out of there.

Q. What?

A. I moved a lot of stones out of there.

Q. Did you replace any of them during that period of time?

A. You see, I had such a lot of stones in the vault when I first opened the deposit there. In the first place, I moved some to New York as I said and to Chicago. I couldn't say exactly how much was moved, sir.

Q. Did you move any of the three containers or receptacles you have referred to—that is, either one or the other of the satchels or trunks—

A. I believe—

Mr. Samuels: Pardon me. I have not finished the question.

Mr. Meyberg: Let him finish the question.

Mr. Samuels: Q. (Continuing:) —or the box? The question is finished now.

Mr. Meyberg: When? Have you got a date there, Mr. Samuels?

Mr. Samuels: Yes. I gave that to him. I said during that period of time.

A. Yes, I think two of the boxes were moved.

Q. Two of the boxes were moved?

A. Yes.

Q. Then you had more than one box?

A. I said I had three boxes—a box and a trunk and a tin box.

Q. I asked you about the box or either of the trunks. Do you understand? We have been differentiating by the terms "box" and "trunks."

A. I think the box and one of the trunks were moved.

Q. You moved entirely then one of the boxes and one of the trunks?

A. Yes.

Q. Was it the smaller or larger trunk?

A. I couldn't say for sure.

Q. When were those two containers removed?

A. I couldn't tell you for sure; I couldn't tell you the exact time of removal.

Q. Was it prior to 1928—the removal?

A. Oh, yes, we moved them prior to that.

Q. Then in the year 1928 the only receptacle left in storage in the Wells Fargo Bank was one or the other of the two trunks, is that correct?

A. I do not know whether they were there right up to 1928, sir. I am not positive about that, sir, as I said previously in my testimony when Mr. Peterson was cross-examining me.

Mr. Samuels: Don't refer to that, please.

A. I said I wasn't sure.

• • • • •

Q. You say you are not sure, is that correct?

A. I am not sure.

Q. You are not sure?

A. That is correct.

Q. With respect to the industrial material, did you move any of that from its place of storage between the years 1914 and 1928? Now, when I say "place of storage" I refer to the City and County of San Francisco.

A. Oh, yes.

Q. Will you tell me the times of removal, the quantities and place?

A. I couldn't tell you the exact time.

Q. You can't give me the time at all?

A. No. It was shipped to New York.

Q. What did you move to New York?

A. I can't tell you the exact weight. It was quite a large quantity.

Q. Do you know where that was stored?

A. No. The vault was pulled down. I couldn't tell you the name of it now.

Q. The vault was pulled down?

A. They pulled them down, and the stuff was moved. We sold quite a lot of that stuff in different places in the East.

Q. One moment. You said the vaults were pulled down. What vaults do you refer to that were pulled down?

A. They were vaults on 42nd Street, I think it was, New York City.

Q. I am talking about San Francisco. I am not talking about New York City, if you don't mind.

A. I beg your pardon. I thought you asked me if I shipped any stuff out, and where I shipped it. I thought that was your question.

* * * * * *

Mr. Samuels: Q. I am referring, Mr. Heiser, to the industrial material which you had stored in the City and County of San Francisco, and nowhere else, and I am asking you whether between the years 1915, when you stored it in San Francisco, and 1928, if you withdrew from storage and moved any portion of that industrial material?

Mr. Meyberg: Go ahead and answer the question.

A. Yes.

Mr. Samuels: All right.

Q. Now, when and from where?

A. I don't know exactly what time, and I can't tell you exactly what place, sir, in San Francisco, that I shipped it.

Q. You can't give me any year at all between the years 1914 and 1928—

A. No, sir.

Q. (Continuing:) —of the time of removal?

A. No. I was in Australia for about three years during that period, and I can't tell you sir; it is impossible.

Q. And you can't tell me the extent of the material which you moved during that period of time?

A. No, not now, sir.

Q. Do you know how much of the material—. I am referring to industrial sapphires, or other industrial gems of the type you referred to. Do you know whether any industrial sapphires were left in storage in the year 1928— in storage in the City and County of San Francisco?

A. In 1928, I don't think there was.

Q. You don't think there were any here at that time at all?

A. I think we shipped it in 1928.

Q. What?

A. I think we shipped it in 1928.

Q. Shipped it where?

A. Shipped it to Los Angeles.

Q. Then do I understand from you that the industrial material which was shipped to Los Angeles in 1928 was shipped from storage in San Francisco?

A. Some of it was. I am not positive, sir—I am not positive whether it was shipped from a warehouse here, or where it was shipped from. It was shipped from San Francisco, but I am not sure of the exact movement of that parcel of industrial stuff you are speaking about.

Q. Were you in San Francisco at the time of any shipment to Los Angeles in the year 1928—

A. No, I was not.

Mr. Samuels: Just a moment.

Mr. Meyberg: Let him finish the question.

Mr. Samuels: Q. (Continuing:) —of material from San Francisco?

A. No.

Q. You were not?

A. No.

Q. Is it not a fact you had industrial sapphires stored in the residence in the City and County of San Francisco

occupied by one E. A. Lobree in any of the following years, 1921, 1922, and 1923?

A. It is just possible I had, sir.

Q. Have you any recollection at all on the subject?

A. No.

Q. You have no recollection at all on the subject?

A. Not at the present time. During that period I think I was out of the country, sir.

Q. Yes.

A. 1921, 1922 and 1923, I think I was in Australia then.

Q. When did you return to the United States after that?

A. I came back to America for a few months, and then I went right back to Australia.

Q. I did not ask you that. When did you return to the United States—what year?

A. I can't tell you what year it was, sir.

Q. Suppose I read to you from your history, and that may refresh your recollection. This has been identified—

Mr. Meyberg: What has it been identified as?

Mr. Samuels: Page 3, and being a portion of a hearing before Assistant Commissioner Thomas J. Kelley.

Mr. Meyberg: Identified by whom, Mr. Samuels—identified by you or by Mr. Heiser?

Mr. Samuels: By Mr. Heiser, and it so appears in the record.

Mr. Meyberg: Mr. Heiser stated he didn't know anything about that statement.

Mr. Samuels: That was not his statement at all.

Mr. Meyberg: That is my idea of his statement.

Mr. Samuels: That was not his statement at all, Mr. Meyberg. I am going to read from this history, and if I haven't laid the proper foundation, then, the fault is mine, and the responsibility is mine.

Mr. Meyberg: All right. Put your question to the witness.

Mr. Samuels: Q. "I returned to America to supply the

demands in 1921." Do you remember making that statement? Is that statement correct?

• • • • •

Q. Did Mr. Goldman represent you in the presentation of that application to the Commissioner of Corporations?

A. Yes, sir.

Mr. Meyberg: Did he represent you personally?

A. No, not me personally. Four or five other chaps.

Mr. Samuels: Q. Did he also represent you upon the hearing on the application?

A. Yes, sir.

Q. And in that letter appears the following:

"Mr. Heiser has handed me a resume of his lifetime operations, and also the background of Ted Zimmer, which I am enclosing herewith as Exhibit 'A' hereof.

"May this letter and the exhibit be considered as an Amendment to the Application heretofore filed in this matter."

Do you remember handing to Mr. Goldman the history which I brought to your attention just now?

A. No, I couldn't quite recollect that, sir.

Q. You can't quite recollect it?

A. No.

Q. Have you any recollection at all on the subject?

A. Not on that particular subject, no.

Q. You have no particular recollection on that subject?

A. No.

Q. You have no recollection of having seen this history of your life before?

A. I don't remember. Not in the way it is there. I don't quite remember it: You see—

Q. You don't quite remember it?

Mr. Meyberg: Just a moment. Let him finish his answer. Give him an oportunity to finish his answer.

Mr. Samuels: Q. Have you any remembrance of it? You said you didn't quite remember it.

A. I was out of Los Angeles while a lot of this was

going on—a lot of this was going on while I wasn't in the city; a lot of it was taking place when I wasn't there, and they used to wire me, and I would come in when I was requested to do so.

Mr. Samuels: I will ask you this question—and I will reserve the right to also later supplement it if necessary—to supplement the foundation laid for the introduction of the history of Mr. Heiser appearing in the record before the Commissioner of Corporations, although I will say at this time there can be no doubt that it is properly admissible, and that the foundation has been amply established.

Q. Did you return to America in the year 1921?

A. It is just possible, sir.

Q. Have you any recollection of doing so?

A. Not the exact date.

Q. I didn't ask you for the exact date. I said in the year 1921.

A. I am not positive that I came back at that time. I crossed from Australia on several occasions during the period you asked me, so I wouldn't tell you whether it was that year or the next year, but I was backwards and forwards there very regularly, sir.

Q. Did you return to America in the year 1922?

A. That I am not sure about.

Q. Did you return to America in the year 1923?

A. I am not positive on that, but I could get my passport book and refresh my memory, and tell you when it was. If you want that, I think I can do that.

Q. Have you a book showing an account of sales made by you of your gems?

A. No, not here.

Q. You have a record?

A. Not here.

Q. Have you one in the City of Los Angeles?

A. No, I haven't.

Q. Where is your record?

A. My records that I had are in London.

Q. You have no local record at all?

A. No.

Q. So that you wouldn't be in a position to testify to—

A. Not the exact dates or times.

* * * * *

(Record read as follows:

"Q. So that you wouldn't be in a position to testify to—")

Q. (Continuing:) —specific sales, quantity or prices, and the approximate time they were made by you in the City and County of San Francisco or elsewhere in the United States?

A. No, sir.

Q. Now, then, did you contract with the Big Four in New York City to supply them with all the gems you could mine or produce for five years?

A. Yes, I had a contract.

Q. Who were the Big Four?

A. Well, I have forgotten their names now.

Q. You have forgotten their names?

A. One of the men was a Mr. Hopkins.

Q. And you have forgotten the other three names?

A. Yes. You are talking about quite a few years ago.

Q. You controlled a quarter interest of the voting stock of the Sapphire Mining & Cutting Corporation, 665, 5th Avenue, New York—do you remember that?

A. Yes, I had quite a large amount of stock, but I couldn't say offhand whether it was a quarter, or whether it was more or a little less.

Q. Were the Big Four the incorporators of the Sapphire Mining & Cutting Corporation?

A. They were supplying the gems to them. I don't know whether they had—I don't know how they held their shares. I never saw the books on that.

Mr. Samuels: I didn't ask you that.

A. I don't know.

Q. Did you deal with the Big Four independently of the Sapphire Mining & Cutting Corporation?

* * * * *

A. Well, I couldn't just recollect now, Mr. Samuels. I had a contract from some group of men I met, and I met

them about three times; they gave me a contract, and I left for Australia I think soon after that, and I was in Australia for quite a while after that; two or three years I think I was in Australia, or possibly eighteen months, and came back, and then went back again.

Mr. Samuels: Switching from that subject for a moment:

Q. Do you remember whether in any one of the years 1919, 1920 or 1921, you returned from Australia to San Francisco or New York, and you brought or had shipped in any one of those years a very large amount of mechanical sapphires; that they were placed in five-gallon oil cans and sealed up and stored in the residence of Mr. Lobree?

A. It is just possible. I was shipping stuff on and off.

Q. I asked you if you remembered that?

A. No, I can't remember it, sir.

Q. You can't remember that at all?

A. No, sir.

Q. Do you remember whether or not at your request by letter or telegram Mr. Lobree in one of the years—either in 1921, 1922, or 1923—shipped that material to New York for you?

A. That I couldn't say, sir.

Q. You have no recollection of that?

A. No. I was shipping stuff backwards and forwards all of the time. I wouldn't have any recollection of that particular parcel, sir, going back that far.

Q. Did you undertake to sell any of that material located domestically—the material I referred to as mechanical material—located domestically either in San Francisco or in New York—to the Big Four as you have designated them, or to the Sapphire Mining & Cutting Corporation?

A. What stuff are you referring to? What particular parcel are you referring to?

Mr. Samuels: Will you read the question, and it will identify it; you will find it is identified in the question.

(Pending question read.)

A. No, they didn't buy industrial-mechanical sapphires. They only bought blue stones.

Mr. Meyberg: Did you hear the question, Mr. Heiser? Did you attempt to sell it?

A. No.

Mr. Meyberg: If you didn't, say so. He didn't ask you what they bought.

A. I beg your pardon.

Mr. Meyberg: My understanding is that he didn't.

* * * * *

Mr. Samuels: Q. Did you know a man in New York by the name of Janchower, I think it is pronounced, or something similar to that?

A. Yes, sir. He was an industrial mechanical sapphire dealer

Q. Did you not have a substantial amount of your mechanical sapphires then stored in San Francisco shipped to New York in an endeavor to sell some to Mr. Janchower?

A. No, I did not do business with Mr. Janchower. Mr. Lobree did a little business with Mr. Janchower.

Q. Do you mean for himself?

A. I was out of the country. No, with my merchandise.

Q. With your merchandise?

A. Yes. It is all hazy, because I was away in Australia, and when I came back he told me about this gentleman. I don't think Mr. Janchower paid us for quite a large amount of material. The poor chap died since, I think. Mr. Lobree met him, and Mr. Lobree sold him.

Q. Then you did not have any substantial amount—by which I mean a ton or more—of mechanical sapphires at any time shipped upon your instructions from the City and County of San Francisco to New York—

A. Oh, yes, I did.

Mr. Samuels: Now, I haven't finished my question.

A. I beg your pardon.

Q. (Continuing:) —for the purpose of sale by you in New York as one lot or in substantial quantities?

A. There was a large amount of industrial sapphires shipped to New York, as I previously stated.

* * * * *

Mr. Meyberg: Go ahead.

A. Approximately two tons.

Mr. Samuels: Q. Approximately two tons?

A. Yes. It may have been a little over that; I think maybe it was a little over two tons.

Q. And they weren't sold, and they were stored in the Lincoln vaults in New York?

A. They were brought here, and I don't know how long they rested here, and then they were shipped right on to New York, if I remember correctly, and they were placed in the Lincoln vaults.

Q. Yes.

A. I think it was called the Lincoln vaults.

Q. And were they reshipped to San Francisco?

A. No, sir.

Q. They were not at any time reshipped to San Francisco?

A. No, sir.

Q. And they did not constitute any portion, then, of the shipment of industrial sapphires which was made by you to Los Angeles in the year 1928?

A. No, sir.

* * * * *

(Thereupon an adjournment was taken until Wednesday, August 27th, 1941, at 10:00 o'clock A. M., and by consent of counsel to be resumed at the same place.)

Room 1700, 333 Montgomery Street, San Francisco, California, Wednesday, August 27th, 1941, 10:00 A. M.

* * * * *

Mr. Samuels: Q. Mr. Heiser, you testified that in 1914 you brought with you one or more packets of commercial sapphires.

A. No, sir, I didn't say that. I said I brought a small package.

* * * * *

Mr. Samuels: Q. Did you bring any commercial sapphires or any opals or zircons with you?

A. I brought some cut opals and rough opals.

Q. In 1914 or 1915?

A. In 1914 or the early part of 1915. I cannot give you the exact date.

* * * * *

Mr. Samuels: Q. Did you declare them to the Custom Office?

A. Yes, sir, and paid duty.

Q. What duty did you pay?

A. I can't recollect now. It is on record there. They have a record as to that.

Mr. Meyberg: He hasn't asked you whether it is on record.

* * * * *

Q. Did you import from Australia at other times during the years 1914 to 1928 any other material which you have been handling, we will say, exclusive of industrial sapphires?

A. Yes, sir.

Q. Did you declare them each time?

A. Yes, sir.

Q. And paid duty each time?

A. Yes, sir.

Q. Can you remember any specific amount?

A. No, sir.

* * * * *

Mr. Samuels: Q. Is it your claim, Mr. Heiser, that you included in the shipment in 1928 to Los Angeles or dispatched there a separate shipment, or took there yourself certain of the gems which you handled, such as commercial sapphires, opals, zircons, and that they were part of the material upon which you brought your suit against Mr. Woodruff, and in which you procured a judgment against him?

* * * * *

Mr. Meyberg: Do you understand the question?

A. No, I couldn't understand it. It seems to be twenty questions to me.

Mr. Samuels: I will ask it anew. You took your cue very quickly, Mr. Heiser.

A. Please don't be personal with your insinuations here. You insinuated you were going to put me in jail.

Mr. Samuels: I insinuated that I was going to put you in jail?

A. Yes, you have all over the country.

Mr. Samuels: You are entirely wrong, sir. I haven't mentioned your name in connection with jail, and this can go on the record if you want it. I haven't thought of you until this matter came before me. Do you know that?

A. No, I don't know it.

Mr. Meyberg: Just a moment.

Mr. Samuels: I am telling it to you definitely now.

A. Well, I would question whatever you said.

Mr. Samuels: I don't care what you question. I don't care to discuss anything with you at all. You are here as a witness to be examined.

A. That suits me.

* * * * *

"Q. You claim, do you not, Mr. Heiser, that a portion of the quantity of material which was the subject matter of the suit in the United States District Court in Los Angeles consisted of commercial sapphires, opals and zircons?")

A. Yes.

Mr. Samuels: Q. Did you pay duty upon those commercial items?

A. I think I told you before the Queensland Government shipped those in, sir.

Q. You didn't tell me that.

A. I told you half a dozen times yesterday.

Mr. Samuels: I ask that be stricken as not responsive.

A. I told you half a dozen times yesterday. This gentleman is trying to trip me up.

Mr. Meyberg: Just a minute, Mr. Heiser, please. You can answer that question. He asked you did you pay the duty

on it yourself? Now, answer it "Yes" or "No." You either did, or you didn't.

A. No.

Mr. Meyberg: That is right.

Mr. Samuels: Q. Do you know whether any duty was paid on it?

A. I wasn't in the country at the time. I don't know when the majority of that was landed.

Q. Do you claim that the commercial material which I have just referred to, and which you assert was a portion of the material upon which you obtained the judgment in the District Court of the United States in Los Angeles, was the material which, or a portion of the material which was shipped by the Government of Australia or Queensland for purposes of exhibition at the Panama-Pacific International Exposition?

Mr. Meyberg: Just a minute. That is objected to as being purely argumentative, and wholly immaterial.

Mr. Samuels: I am identifying the material with the material which he claims he did not pay duty on and which was shipped by the Government. It is entirely material, and the purpose of it must be obvious—the purpose of the question must be obvious. Do you understand the question, Mr. Heiser?

A. No, I do not, sir.

* * * * *

Mr. Samuels: We will enlarge the question.

Q. (Continuing:) Or to permit of your selling of the same?

Mr. Meyberg: Do you understand the question?

A. Not very clearly. It is a very long question.

Mr. Samuels: Will you read the question again with that addition to the witness, please?

(Pending question read as follows:

"Q. Do you claim that the commercial material which I

have just referred to, and which you assert was a portion of the material upon which you obtained the judgment in the District Court of the United States in Los Angeles, was the material which, or a portion of the material which was shipped by the Government of Australia or Queensland for purposes of exhibition at the Panama-Pacific International Exposition, or to permit of your selling of the same?"

* * * * * *

A. Yes, I believe it was, all of it.

Mr. Samuels: Q. Did you pay any duty on the same?

Mr. Meyberg: That is objected to as wholly immaterial, and having been asked and answered previously. Go ahead.

Mr. Samuels: That is all right.

A. Mr. Samuels, for your information there is no duty in the United States on any class of rough industrial gems.

Mr. Meyberg: He has not asked you that.

A. I beg your pardon. So that you don't pay duty if it doesn't exist.

* * * * * *

Mr. Samuels: Q. What was the name of that corporation in New York, or of persons who lived in New York who formed a corporation in which I believe you stated one or more of the Big Four of New York were associated?

A. Mr. Hopkins.

Q. Pardon me?

A. Mr. Hopkins.

* * * * * *

Mr. Samuels: Do you recall the question, Mr. Heiser?

A. No, I would like it read.

Mr. Samuels: Read the question to him.

(Pending question read.)

A. No.

Q. Do you know of a corporation by the name of Sapphire Mining & Cutting Corporation, 665, 5th Avenue, New York?

A. Yes.

Q. Were you associated with that company in any way?
A. I supplied them with gems.
Q. You did supply them with gems?
A. From Australia.
Q. Did you own stock in that corporation?
A. I was supposed to own stock, but it was never delivered to me.
Q. How long did you supply them with gems?

* * * * *

A. I couldn't tell you exactly how long; I couldn't say. Possibly three years, but I couldn't tell you exactly.
Q. What is your best recollection—instead of "possibly"?
A. That is twenty-one years you are going back.
Q. Have you any recollection on the subject at all?
A. We shipped from Australia every month, but I couldn't tell you exactly.

Mr. Samuels: I didn't ask you that.

Q. Have you any recollection at all?
A. I have a recollection that we shipped from Australia, but the quantity, time or period I couldn't tell you.
Q. All I asked you was the length of time you shipped.
A. No, I don't know.
Q. You don't know?
A. No.
Q. That corporation is defunct, is it not?
A. No. Two of the gentlemen, or one of the chief gentlemen connected with it died, and the boys didn't get on so well after that. There was a terrible slump in the market, and it went out of existence, I think. It was eight or nine years ago, I think, but I couldn't tell you exactly.
Q. Well, your connection with it terminated, did it not, when you discontinued supplying it with gems?
A. Yes. We shipped the gems from Australia to them. I didn't supply the gems. I shipped them from Australia myself direct to New York City. Now, the dates and times and places I can't give you that, sir, because my memory is not that good.
Q. It was a stock selling venture, was it not?
A. No, there was no stock sold in the company at all that I know of.

Q. Were you to receive 50% of the stock?

A. No, sir.

Q. What percentage were you to receive?

A. Only a small portion, but I have forgotten exactly, now.

* * * * *

Mr. Samuels: Q. Now, in the month of August, 1928, what stocks of your material did you have in the United States, and where?

Mr. Meyberg: That is objected to as being wholly immaterial, and not within the issues here.

A. I couldn't recollect now, sir.

Mr. Samuels: Q. You can't recollect at all?

Mr. Meyberg: Let me have that question again.

(Record read.)

Mr. Meyberg: All right. It has been asked and answered. Go ahead.

Mr. Samuels: Q. Do you recall having a stock of material at the Wells Fargo Bank?

A. Now, that I am not quite sure about, sir. In 1928 I had material there after the Fair, and it was there for quite a few years, and we were moving backwards and forwards, and I don't know whether all of my material was there all of the time or part of the time; it is hazy. It goes back quite a few years.

Mr. Samuels: Let me see if I can't refresh your recollection.

A. And I had stuff in various places, and I can't recall exactly whether it was in the Wells Fargo Bank all of the time or part of the time. I have always been under the impression that it was, but yet it is still hazy to me; I am not sure.

Q. Did you inquire of the Wells Fargo Bank yesterday or this morning as to that?

A. No, sir. I was there about ten days ago, and asked them, and they said they couldn't give me any records on it;

they said they couldn't give me any more information. I asked two or three gentlemen about that.

Mr. Samuels: Q. I am referring to page 268 of the transcript of the testimony adduced in the proceeding revaluation—

* * * * *

Q. (Continuing:) —of the materials which were the basis of the judgment rendered by Judge Cosgrave in the District Court of the United States for the Southern District of California, Central Division, and I will call your attention to the following questions and answers— this is line 21:

"Q. By the Court: Mr. Heiser, these materials came, in the first place, to the 1915 Exposition at San Francisco, did they?

"A. Yes."

Do you recall that question and answer?

* * * * *

Q. Now, do you recall the question, Mr. Heiser?

A. No, I do not.

Mr. Meyberg: Read the question, Mr. Reporter.

(Pending question read.)

A. Well, I don't recall that question, but that is a fact—they did come in for the Exposition.

Mr. Samuels: Q. "Q. And they have been in the country ever since?

"A. Yes."

Do you recall that question and answer?

A. No.

* * * * *

(Record read.)

Mr. Samuels: Q. You have no recollection of testifying that they had been in the country ever since?

A. I can't recollect now, sir.

Q. What?

A. I can't recollect now.

Q. Is it a fact that they were in the country ever since, or were they taken out of the country by you?

A. No, they were here. They wouldn't have been taken out—I don't think they would have been taken out.

Q. Do you mean here in San Francisco?

A. Well, it is very hard to remember, sir.

Q. I am asking you what you mean by the word "here."

A. In America.

Q. They may have been taken out of San Francisco by you in whole or in part?

A. I am not sure, sir. It is hard to remember.

Q. I will read the question commencing on line 3, page 269, of the same record:

"Q. Where were they between 1916, say, the beginning of 1916 and 1928?

"A. They were the majority of the time in the Wells Fargo Bank."

Do you remember the question and the answer?

A. No, I can't remember the question or the answer, sir, but I think that is about right. They were the majority of the time, or part of the time.

Q. You do not recall so testifying, though, as I read it to you?

A. I can't recall so testifying, no, but it is a fact that they were either in one of the Wells Fargo banks, but I am not sure whether the majority was there all of the time.

Q. Were they in the Wells Fargo Bank at the time of shipment in whole or in part in August, of 1928, and being part of certain material shipped by you to Los Angeles?

A. I am not sure, sir.

Q. Have you any recollection on the subject?

A. No, sir.

Q. Referring to page 239 of the same proceedings, I will read to you the following questions and answers—on line 16:

"Q. Where were these stones, Mr. Heiser, such as you have described in your complaint, from the close of the Exposition in 1915 down to 1928?"

Objection urged by Mr. Meyberg; overruled. And this is the answer on line 23:

"A. I think in the Wells Fargo Nevada Safe Deposit Company.

"Q. In San Francisco?

A. Yes, sir."

Do you recall those questions and answers?

A. I do not recall them.

Mr. Meyberg: Just a minute.

A. Pardon me.

• • • • •

Now, you will read the question to the witness, and we will get his answer.

(Question and answer read.)

Mr. Samuels: Q. Were they at that time in the safety deposit vault of the Wells Fargo Bank?

Mr. Meyberg: May I also add the further objection that counsel failed to read the question before the answer:

"Q. By Mr. Peterson: Where were they?"

Mr. Samuels: I read that.

Mr. Meyberg: "By Mr. Peterson: Where were they?

"A. I think in the Wells Fargo Nevada Safe Deposit Company.

"Q. In San Francisco?

A. Yes, sir."

Mr. Samuels: That is just a repetition of the previous part that I read, but be that as it may.

Q. Were they at that time according to your best recollection in the Wells Fargo Bank in San Francisco?

A. I think they were.

Q. You think they were?

A. Yes. I don't think they were there all of the time as I previously stated.

Q. Now, I am calling your attention to page 12 of a transcript of proceedings in the District Court of the United States for the Southern District of California, Central Division, before Honorable Earl E. Moss, Referee, in the matter of Golden State Gem Company, Bankrupt, No. 13393-J:

marked on the cover "Original," and certified to by C. N. Olson, Official Reporter, and particularly page 12 of the transcript.

"A. I went up with Mr. Smith and showed—"

This answer is purporting to come from Mr. Heiser:

"A. I went up with Mr. Smith and showed the gems to Mr. Woodruff and Mr. Woodruff said they were fine and good and could be used in some partnership arrangement they had. I was not interested in that. I was more interested to get my money. I sold the stuff and got the check from Mr. Woodruff for it. Then Mr. Smith told Mr. Woodruff, said I had just come from Australia and we were discussing the matter and I told him of the sapphires which I had already in the vault in San Francisco, which had just arrived. Mr. Woodruff was very much interested and Mr. Smith said 'You know with your money and my 2,000 customers, which are some of the richest men in America, and with Heiser's stock here we could make a wonderfully-fine business.'"

Do you remember so testifying before the—

Mr. Meyberg: Just a minute—

Mr. Samuels: One moment. I haven't finished the question.

Q. Do you remember so testifying in the proceeding I have referred to before the Referee in the bankruptcy matter?

A. How long ago was that?

Mr. Samuels: A counter-question is of no significance.

Q. Do you remember so testifying?

* * * * * *

Mr. Samuels: For your edification, Mr. Heiser, the testimony that I have read to you was given on April 14th, 1932, at Los Angeles, California, and the answer was made in conformity with the following questions, commencing on page 11 of the transcript: "M. E. Heiser, Direct Examination.

By the Referee:

"Q. You are the claimant in this matter?

"A. Yes, your Worship.

"Q. Now, will you start with your first negotiations for the delivery of these sapphires and zircons—what was it, sapphires entirely?

"A. No, sapphires and opals and jades, your Worship.

"The Referee: Relate just what occurred?

"A. Starting in July, 1928, I came to the Golden State Gem Company of California and I met Mr. Calvin Smith. I just arrived from Australia, your Worship, had been out on a three-year mining campaign and I asked Mr. Smith was he in the market for any gems.

"Q. That was in the place of business of the Golden State Gem Company?

"A. Yes, and I sold him—

"Q. And what did he say when you asked if he was in the market?

"A. He said he was in the market and he said he could not purchase them, he didn't have the money, he didn't have the cash but he said his backer would if I went with him to his place, and we went to Mr. Woodruff's home and I showed Mr. Woodruff the gems Mr. Smith had selected from my various parcels—

"Mr. Meyberg: Pardon me. Those are not the gems in controversy?

"A. No. His Worship asked me to tell what happened.

"Mr. Meyberg: I just wanted him to understand that."

Then the answer is what I read to you at length, and in which you stated "and I told him of the sapphires which I had already in the vault in San Francisco, which had just arrived."

Mr. Meyberg: Objected to as no foundation laid: immaterial.

Mr. Samuels: Q. Do you want to see the transcript?

A. Yes.

Q. What?

A. Yes.

Q. You would like to see it?

A. Yes.

Mr. Samuels: Here is your answer starting at page 12. (Indicating to witness.)

* * * * * *

Mr. Samuels: Q. Do you recall so testifying at that hearing?

A. No, I can't just recall that, sir.

Q. You can't recall whether or not you testified that "I told him of the sapphires which I had already in the vault in San Francisco, which had just arrived"?

A. No.

Mr. Meyberg: Objection on the ground no foundation has been laid, and it has just been asked and answered.

Mr. Samuels: Will you read the question to the witness?

(Question and answer read.)

Mr. Samuels: Q. Had some sapphires just arrived in San Francisco which were in a vault referred to by you?

Mr. Meyberg: Just a minute. Objected to as immaterial.

Mr. Samuels: Q. By "arrived at that time," you meant just arrived in the year 1928?

Mr. Meyberg: Objection on the ground no foundation has been laid.

Mr. Samuels: Will you answer the question?

A. I can't recall.

Q. You can't recall?

A. No.

Q. Then you cannot recall which is accurate: That sapphires had just arrived, as stated by you in this excerpt of your testimony, composed in part of the shipment made to Los Angeles in the month of August, 1928, or whether they were sapphires earlier in your possession, is that correct?

A. I couldn't say, sir.

* * * * * *

Mr. Samuels: One moment. Do you understand the question, Mr. Heiser?

A. No.

Mr. Samuels: You did not understand it when you answered it?

A. No.

Mr. Samuels: Read the question, Mr. Reporter.

(Question and answer read as follows:

"Q. Then you cannot recall which is accurate: That sapphires had just arrived, as stated by you in this excerpt of your testimony, composed in part of the shipment made to Los Angeles in the month of August, 1928, or whether they were sapphires earlier in your possession, is that correct?

"A. I couldn't say, sir.")

A. I wonder if he would re-read that question again?

Mr. Samuels: Certainly.

A. That was a long question.

Mr. Samuels: All right. Read the question again, Mr. Reporter.

(Question read as follows:

"Q. Then you cannot recall which is accurate: That sapphires had just arrived, as stated by you in this excerpt of your testimony, composed in part of the shipment made to Los Angeles—")

Mr. Samuels: Strike out "of".

Mr. Meyberg: Now, counsel wants to strike out a portion of his question. I objected on the ground the question was unintelligible.

(Pending question and answer re-read.)

Mr. Meyberg: Do you understand that question?

A. No, it is still foggy to me, because you refer to "sapphires arrived" and "stuff brought in there", and I can't understand the question. Now, maybe it is I am stupid. I have been sitting here for a day and a half listening to your twists and turns.

. . . . . .

Q. I will ask you this question: Referring to the shipment to Los Angeles made in the month of August, 1928, which was the subject matter of the action brought by you against Woodruff in the United States District Court in Los Angeles, and upon which you obtained a judgment, I will ask you whether any portion of that shipment consisted of sapphires which had arrived at or about that time of shipment, or shortly earlier, or constituted a portion, or any part, or the whole of the material which you had stored in the Wells Fargo Bank, or elsewhere, after your termination of your exhibit at the Exposition?

. . . . .

A. No, I don't understand the question.

Mr. Samuels: Read the question to the witness, kindly.

(Pending question read.)

Mr. Samuels: Do you understand the question?

A. Not very well, now, either.

Mr. Samuels: I will break it in parts so that you will understand it.

Q. Referring to the shipment of your material to Los Angeles in the month of August, 1928, did any portion of it consist of sapphires which had recently arrived from Australia?

A. Would you mind giving me that last question again?

(Pending question read.)

A. It is possible. It could have been.

Mr. Samuels: I did not ask you if it was possible. I ask that the answer be stricken as non-responsive.

Q. Can you state whether or not any portion of it consisted of sapphires which arrived from Australia?

A. Any portion of what?

Q. Of that shipment?

A. What particular shipment are you speaking of? That is what I mean.

Q. The shipment made by you or on your behalf in the month of August, 1928, to Los Angeles.

A. It is possible that I could have had sapphires that were just recently brought into the country.

Mr. Samuels: I did not ask you if it was possible. That is conjecture on your part.

Q. I asked you whether according to your best recollection any portion of that shipment—and you have the shipment in mind now, just referred to—consisted of sapphires which had then recently arrived from Australia?

A. I think I had with me at that time approximately 50 or 100 parcels of rough blue sapphires and some zircons and opals that I brought in with me, and I think I took them to Los Angeles, and some of them—since you read that to me, it comes back to me—I think some of those I sold to Mr. Smith and Mr. Woodruff.

Q. When I refer to the shipment—so that it may be before you with greater certainty—I am referring to the shipment which was the subject matter of your action in the District Court of the United States for the Southern District of California, Central Division, and upon which you procured a judgment.

A. I beg your pardon.

Q. What?

A. I say I beg your pardon. I misunderstood that, you see.

Mr. Samuels: Well, I am clarifying it for you.

A. Now, would you mind re-reading that question to me?

Mr. Samuels: I will ask you the question again.

Q. Referring to the shipment last identified—and you understand it now, do you?

A. Yes, sir.

Q. (Continuing:) —did any portion of it consist of sapphires which had recently arrived—and by recently I refer to approximately the time of August, 1928—from Australia?

A. No, I don't think so, sir.

Q. Was that shipment made up entirely of material which was a portion of the shipment received by you for exhibition at the Exposition?

Mr. Meyberg: And sale—for exhibition and sale—for all purposes.

Mr. Samuels: For all purposes.

Mr. Meyberg: Yes.

Mr. Samuels: For all purposes.

A. To the best of my knowledge it all was, yes, sir.

Q. Did you receive in San Francisco any other material than that last referred to—that is, that which was shipped in 1914 or 1915—from the year 1915 to 1928?

* * * * *

(Pending question read.)

A. I think there was a lot of stuff shipped around that period, sir, but I couldn't give you the exact dates or times on it now. I was away mining, as you read to me a moment ago; I had been away on a mining campaign for several years, and during that period I would naturally have shipped materials, but to give you the dates, I couldn't.

Mr. Samuels: Q. Would you ship it to San Francisco?

A. I would ship it to different parts of the world, sir.

Q. I asked you as to San Francisco.

A. It is just possible.

Q. It is just possible while you were away in Australia you shipped material to San Francisco?

A. San Francisco, London, Germany, or all over the world.

Q. To whom would you consign it in San Francisco?

A. I wouldn't remember now, sir.

Q. You have no recollection at all whom you would consign material to in San Francisco if you shipped any from Australia while you were there, is that right?

A. You are speaking of ten or fifteen years ago.

Q. I asked you for your recollection.

Mr. Meyberg: Is it from 1921 or 1923, or around that time?

Mr. Samuels: What is that?

Mr. Meyberg: What is the date you are referring to?

Mr. Samuels: I am referring to the period from 1915 to 1928.

A. I couldn't remember that far back.

Q. Was the material which you state was shipped to San Francisco between 1915 and 1928 stored separately from that which was stored in the Wells Fargo Bank of this city?

A. Oh, it naturally would have been.

Q. Where was it stored, do you know?

A. That I couldn't say, no, sir; I told you yesterday I couldn't recollect. I tried hard to recollect, but I can't do so.

Q. Can you state anything with respect to the aggregate quantity of the material which was shipped between 1915 and 1928?

A. No, sir.

Q. To San Francisco, of course?

A. No, sir, I couldn't remember that.

Q. Did you have any selling agent or agents in San Francisco while you were in Australia or absent from the United States?

* * * * *

(Pending question read.)

A. At what time?

Mr. Samuels: Q. From the year 1915 to the year 1928.

A. I can't recollect, sir.

Q. You do not know whether you had a selling agent, or not, during that period of time?

A. No, sir, I can't recollect.

Q. Do you recall whether you made any sales, or whether any sales were made for you within the time named of material which was stored or located in the City of San Francisco while you were absent from the United States?

A. There is no doubt I did. There was a lot of stuff sold, but I couldn't tell you to whom, or when and how it was sold, sir.

Q. Well, who would sell that during the period of your absence?

A. I would ship from Australia, as I previously said, to the different people. I shipped to Germany, England, France, and Switzerland.

Q. I am talking about material located here in San Francisco—your supply of material which you had here.

A. I don't think that I sold any stuff from supplies of material when I was out of the country, sir.

Q. And the sales which you referred to as having been made while you were out of the country were on orders taken by you before you left the country?

A. That is how it is generally done.

Q. And were filled with materials you shipped from Australia?

A. That is the way it was generally done, sir.

Q. Why didn't you use any of your stock here?

Mr. Meyberg: Objected to as being purely argumentative, and calling for an answer not within the issues here.

Mr. Samuels: Will you answer the question, please?

A. I don't know why. I didn't do it that way, that is all. Just why do you light your cigar with your right hand? It is the same question. It is your habit, I suppose.

Mr. Samuels: I am not going to move to strike that out. I want the Court to observe your method of answers, and I am very pleased to have that in the record. It is but typical of your method of answering questions.

A. Well, I didn't do it with an idea of being impertinent, sir. Please don't misunderstand me. It is just my way of answering that question.

Mr. Samuels: Now, page 33—. Pardon me, just one moment, gentlemen.

Mr. Meyberg: I don't blame you for taking time with all the documents you have there.

Mr. Samuels: We will get that at the lunch hour.

Q. Did you make any sales from any of your material stored in San Francisco following the termination of your exhibit at the Exposition, and to the month of September, 1928? Do you understand that question?

A. Not right off. I will ask the reporter, if I may, if he will please repeat it.

(Pending question read.)

* * * * *

A. After the Fair for several years I was making sales in many parts of the world, as I said yesterday, and I made some sales all over this country—in San Francisco and in Los Angeles, and all over America I have sold stuff; I have been selling cut merchandise and rough merchandise all over the country, but to recall the specific time, date and place, and to whom, I couldn't remember.

Mr. Samuels: Q. I asked you from the stock you had in San Francisco.

A. I have been bringing stuff in at different times.

Q. How much have you brought in—could you tell me at all?

A. No.

Q. Could you tell me within the limits of $10,000.00 and $100,000.00?

A. I couldn't. I would be guessing, sir.

Q. You couldn't tell whether it was $10,000.00 even?

A. I wouldn't like to say now.

Q. It could have been more, or it could have been less, is that correct?

A. Oh, it could have been more than $10,000.00.

Q. How much more than $10,000.00?

A. I couldn't say.

Q. Was it more than $20,000.00?

A. I don't want to guess. You are only encouraging me to guess, and I don't want to guess.

Mr. Samuels: I don't want to encourage you to guess.

A. You are trying to coax me when I haven't a definite recollection. I don't want to have you coax me.

Q. Could it have been more than $20,000.00 worth of material that you have brought in?

A. I am not sure.

Q. You are not sure?

A. No.

Mr. Samuels: It is 12:00 o'clock. I suppose we should adjourn. What time do you want to resume?

Mr. Meyberg: Will 2:00 o'clock be agreeable?

Mr. Samuels: Will you be here promptly?

Mr. Meyberg: Yes.

Mr. Samuels: If you will, kindly.

(Thereupon an adjournment was taken until 2:00 o'clock P. M., Wednesday, August 27th, 1941, and by consent of counsel to be resumed at the same place.)

Room 1700, 333 Montgomery Street, San Francisco, California, Wednesday, August 27th, 1941, 2:20 *A.* M.

* * * * *

Examination by Mr. Samuels (Resumed).

Mr. Samuels: Where were we last on this, Mr. Reporter?

(Record read.)

Q. When you refer to the mines in Australia, Mr. Heiser, do you refer to mines owned by you or leased by you?

A. What kind of mines do you mean, sir?

Q. I am talking now about the mines involving the character of gems which are the subject of your claim or the judgment upon which the claim is based.

* * * * *

A. Nearly all the mines you get in Australia are lease-owned from the Crown. You call them patented in this country. We call them freehold in Australia. The majority of them are leased.

Mr. Samuels: Q. Yours come within what category?

A. Within the category of leasehold mines.

Q. How many leasehold mines did you have in the years 1927 and 1928?

Mr. Meyberg: Objected to as hearsay; no foundation laid; immaterial. I still assume that you will connect it up in some way.

Mr. Samuels: Yes.

A. Well, I couldn't tell you. In 1927 and 1928?

Mr. Samuels: Yes.

A. Oh, I had miles of country, sir. I couldn't tell you the exact amount of leases.

Q. When you say 1927 and 1928, do you mean different parcels separately leased from the Government, or leased as a unit from the Government?

A. I had leases from the Government, and I had grants from the Government, and I had what is called a private miner's lease—I don't know how many I had, sir; I couldn't tell you; it is impossible, but they extended for miles in area.

Q. And were you operating all of them during the two years in question?

A. 1927 and 1928? Now, wait a minute. 1927 I was over there, and 1928 I was over here. I can't tell you the exact date of arrival. I was not here very long. I left in September. I was just trying to get some papers to revive my memory on this, sir, and I couldn't find all the papers I was looking for, but some time in September, 1928, I left for London, and I couldn't have been here very long because my passport at that time was only permitted to go through the country; and in 1927 and 1926, and I think 1925, I was in Australia. We were mining then, and I had two dredges operating; I had a steam shovel operating, and I had a big staff of men working for me.

Q. That mine you refer to, was that mine known by any particular name?

A. Oh, no. We were going to start naming them, but we changed our mind about it because it was getting complicated. They generally called them the Sapphire Valley Mines. I practically owned the Sapphire Valley in New South Wales at that time.

Q. Under leases?

A. Yes, because—

Mr. Samuels: We don't need explanations if we can avoid it.

Q. Was it known as Heiser Burmah Sapphires, Limited? Was that one of the mines you referred to?

A. Yes, sir.

Q. That was a corporation, wasn't it?

A. I am not sure whether it was a corporation or a syndicate, now, sir. That was quite a little while ago.

Q. Well, do you not know that a number of shares in that company, whatever it was, had been sold and were owned by a number of persons?

A. It is very possible, sir, in Australia, but it could have been a syndicate just the same. They sell shares in a syndicate, you know.

Q. Now, you say you were operating the mine with a great many men, and with two dredges, and a steam shovel, in 1927?

A. To the best of my recollection, yes, sir.

Q. Then you were not in need of funds at that time to operate, were you?

A. In 1927?

Q. Yes.

A. Yes. I needed a lot of money then for a ditch line. We were figuring on a ditch line of twenty miles onto a diamond property.

Q. That was the only purpose you needed money for, was it?

A. No, we needed it for sapphires also. The leases that the Government grant are granted with a provision that certain work is done in a certain time, and if you have not got the work done you have to have the machinery on the property in order to fulfill the lease provisions.

Q. Otherwise the lease is lost?

A. You lose the lease if you don't keep up with the provisions of the lease. Nearly all Crown leases have those clauses in them. That is so in order that no one man can hold the country and have it tied up.

Q. But you were working a very substantial number of men you say, and two dredges and a shovel in that year, and you had the funds with which to operate upon that basis, isn't that right?

A. Yes, sir.

Q. I am going to show you a letter, and it bears date, "14/4/27;" the letter is headed "M. E. Heiser, Sapphire Valley, via Inverell, N.S.W., Australia" that is typed—and ask you whether that is your signature on the bottom of the second page?

. . . . . .

Q. Is that your signature, Mr. Heiser?

(Document exhibited to witness.)

A. Yes, I think it is my signature.

Q. Do you think it is, or do you know it?

A. Well, I am not sure. The way that "M" is made, I am not sure.

Mr. Meyberg: Take a very good look at it, and take your time, and make up your mind whether it is or it isn't your signature; and if you can't tell, you can say so.

Mr. Samuels: That is right.

A. I am not sure, Mr. Samuels. That "M" doesn't look exactly like mine, or the "r".

Q. What is your best judgment as to whether it is your signature or not?

A. It was written ten years ago.

Mr. Samuels: I am not asking you when it was written.

Mr. Meyberg: No, it was written fourteen years ago.

A. Well, it was written fourteen years ago.

Mr. Meyberg: Take a look at it, and make up your mind whether it is your signature, or not.

Mr. Samuels: Q. I am asking you according to your best judgment whether that is your signature, or not.

A. Part of it looks like my signature, but the "M" and the "r" don't look like my writing.

Q. Does the rest look like it?

A. Part of it looks like it, but the other part doesn't.

Q. Which part doesn't look like your writing?

A. The way the "e" and "i" come together, and the spreading of the "s" and "e", and that "r" doesn't look like it, or the "M"; it doesn't look like my signature, yet it might be. It was quite a few years ago, and you know my mind and eyes are not that good that I can tell after so many years.

Mr. Meyberg: Now, why don't you read the letter into the record?

A. Some of it looks like it, and some of it doesn't.

Mr. Meyberg: Just take a look at the letter.

Mr. Samuels: Will you read this letter which I have just

identified for the purpose of the record, and you may disregard the lead pencil notations.

Mr. Meyberg: May I see the letter.

Mr. Samuels: Disregard any lead pencil markings, and answer whether or not that letter and the typewritten content were written by you to the addressee, Mrs. Maud James Loller.

(Thereupon the witness and Mr. Meyberg examined document.)

Mr. Meyberg: What is the question?

(Pending question read.)

* * * * *

A. It could be my signature, and I could have sent it, but I don't recollect having sent the letter. The signature doesn't look like my signature, Mr. Samuels, but it could be.

Mr. Samuels: I am offering in evidence the letter just submitted to the witness, excluding all lead pencil notations and markings upon it, and limiting the letter to the typewriting and the handwritten signature of the witness, if it be his signature.

Mr. Meyberg: Objected to—

Mr. Samuels: I am not finished yet. I am offering it in evidence, and I am going to ask a question with reference to it. I ask that this be marked as "Objector's Exhibit 3."

Mr. Meyberg: Now, are you through with your offer?

Mr. Samuels: Yes. I am going to ask some questions on it. Do you want to object to the introduction first?

* * * * *

(Letter dated 14/4/27 to Mrs. Maud James Loller from M. E. Heiser, marked "Objector's Exhibit No. 3.")

Mr. Samuels: Q. Now, Mr. Heiser, calling your attention to this letter, on the first page, and the language, "Because I have the dredge here—", did you have one dredge or more than one dredge at that time?

A. I had a large dredge there, and I had another dredge

in a place called Murray's Water—one of the largest suction dredges in the country.

Q. Where is Murray's Water located?

A. In New South Wales.

Q. In New South Wales?

A. Yes; it was unassembled. We had to assemble it, but I didn't have sufficient capital for that.

Q. Now, is your statement in this letter, "But I haven't the working capital, I need about $6,000 now," correct?

A. To the best of my—

* * * * *

Mr. Samuels: What was the witness' answer, Mr. Reporter?

(Record read.)

Q. To the best of your what?

A. To the best of my recollection. I couldn't recollect now, Mr. Samuels. That was a long time ago that you are asking me about.

Q. You don't know whether it was correct, or not? You don't know whether in 1927 you needed $6,000.00 to operate?

A. I might have needed $6,000.00 to put another dredge up.

Q. I didn't ask you that question. I said you didn't need $6,000.00 to operate?

A. I might have needed $6,000.00 to operate, but I don't think I was that short in money at that particular time.

Q. Did you need $6,000.00 at that time for any other purpose than to put up another dredge?

A. Not to my knowledge. I am not sure. You are asking me something as to 1927.

* * * * *

Q. Following the language I just read to you, "and we could produce sapphires from this amount to get us going on a small way", was that correct at that time according to your best recollection?

A. If I wrote that, there is no doubt it was true at that particular time, sir.

Q. All right. "—which would be the means of selling enough stock in the company, and from the sale of that stock

"A. Yes.

"Q. Where were they between 1916, say, the beginning of 1916, and 1928?

"A. They were the majority of the time in the Wells Fargo Bank.

"Q. In San Francisco?

"A. Yes, sir.

"Q. They were owned by you all the time?

"A. Yes, sir."

Now, here are the questions and answers that I am going to bring to your particular attention:

"Q. How did it come that they were lying there without action on the part of anyone?

"A. I did not need them. It was a reserve, sir. We mine the stuff in Australia and ship it to different parts of the world, and don't touch it. For instance, in the Lincoln vaults I had a parcel for ten years, and didn't touch it. I have a parcel in London we don't touch."

Do you recall testifying to that effect? Do you want to know the year of the testimony?

A. Yes.

Mr. Samuels: That was in 1939, wasn't it, Mr. Meyberg?

Mr. Meyberg: Yes, in June, of 1939.

Mr. Samuels: June, 1939.

Mr. Meyberg: At the time the trial was had before Judge Cosgrave as to value in this proceeding.

Mr. Samuels: That is right.

A. I remember testifying then, yes.

Q. And do you remember testifying to that effect?

A. No, I can't remember because there were so many hundreds of questions asked me. It is very difficult for me to remember those questions.

Q. Is it true at the time referred to, in 1916 and 1928—that is why I gave you the context—you did not need the material stored in the Wells Fargo vaults?

A. I beg your pardon. Would you mind re-asking that?

Mr. Samuels: Would you read the question?

(Pending question read.)

A. No, I didn't need them at that time.

Q. Did you at that time have materials stored in the Lincoln vaults?

A. If I said there that I had, then I had it stored there, sir.

Q. I am not asking you that. I said did you?

A. I must have.

Q. Your best recollection is you did?

A. Yes, that is my best recollection.

Q. Where are the Lincoln vaults?

A. In New York.

Q. Where are they in New York. Was it a portion of a bank?

A. It was a place that was pulled down. It was on 42nd Street, near the Grand Central Station at that period of time, and it was pulled down to build a larger building there.

Q. Do you know what you had stored, we will say, in 1928, in the Lincoln vaults in New York—the character and the extent of the material?

* * * * *

A. I couldn't tell you exactly what I had there, Mr. Samuels, but I did have a lot of material there.

Mr. Samuels: Q. You can't recollect the different items entering into it, or the character of them?

A. No, sir.

Q. I mean whether it was cut or rough—whether it was mechanical or commercial?

A. Oh, it was all classes, sir.

Q. You don't know which predominated?

A. No, I couldn't tell you offhand; I could in any way.

Q. You couldn't say anything about the extent of the material there?

A. No. There was a considerable amount, but I couldn't give you the weights; I couldn't tell you approximately, but it was considerable.

Q. What do you mean by "considerable"?

A. Oh, quite a lot.

Q. What do you mean by "quite a lot"? That is a relative term as Mr. Meyberg has probably said before.

get working on a big scale and then try to control the sapphires of Australia."

Was that statement correct according to the best of your recollection?

Mr. Meyberg: * * * Go ahead and answer, Mr. Heiser.

A. I can't recollect exactly so far back, Mr. Samuels.

Mr. Samuels: Q. What is your best recollection?

A. I am telling you it is impossible for me to recollect.

Q. Then you have no recollection on the subject?

A. Not that far back, no, sir.

Q. Now, then, was it necessary for you to sell stock in a company at that time to get working on a big scale?

* * * * *

Q. Was it necessary at that time, according to your best recollection for you to get $6,000.00 to get going on a small way, as you state in your letter?

Mr. Meyberg: Objected to—

Mr. Samuels: Q. (Continuing) Or as it is stated in the letter?

* * * * * *

Mr. Samuels: Will you answer the question, Mr. Heiser?

A. I can't recollect, as I said before, it is so long ago, Mr. Samuels.

Q. Then you don't know whether or not it was necessary for you to get $6,000.00 to get going on a small way, is that right?

A. I haven't any recollection of this today. I told you I don't recollect because it is so far back.

Q. I am not asking you whether you have any recollection. I asked you whether it was necessary for your to get $6,000.00?

A. I can't remember now.

Q. (Continuing:) To get going on a small way at that time?

A. I can't remember now.

Mr. Samuels: All right. That will be introduced in evidence as "Objector's Exhibit 3."

Q. Referring further to the letter, and on page 2, I call your attention to the language: "Would it be possible for you to lend the company $6,000 for 18 months, so that we could get started and you can be paid from the sale of stones from the mine?" What company do you refer to?

* * * * *

Mr. Samuels: Q. Do you know the company that was referred to in that letter?

A. I couldn't remember.

Q. You can't remember?

A. No, sir.

Q. Now, further with respect to the language which I have read to you, was it necessary for the company—whichever company it was—to borrow $6,000.00 simply to get started?

* * * * *

Mr. Samuels: What is your answer?

A. I can't remember the incident that occurred so far back.

Mr. Samuels: All right, sir.

Q. The language further in this letter, in the next paragraph:

"Mr. B. Schlessinger, of S. F., is to form the company for us and I know that if he does and you lend a helping hand we will soon be going on a big way, so please do as you think best, partner, but I am anxious to start producing and that would be the means of selling a lot of stock."

Were you contemplating at that time forming a stock company to sell to the public?

* * * * *

Mr. Samuels: You may answer.

A. I can't recollect so far back, Mr. Samuels.

Q. You don't know whether you were contemplating at that time forming a stock company and selling to the public?

A. I can't remember about that letter at all. I don't know anything about it.

Q. I am not asking you anything about the letter.

A. Or the contents of the letter or the conditions that prevailed at that time.

Q. I am asking you this: Whether you were contemplating that Mr. Schlessinger, or anybody else in San Francisco, or elsewhere, was to form a company for you to permit of your procuring funds to operate any one of your mines—your Australian mines, and to that end selling stock?

* * * * * *

A. I can't remember the conditions prevailing at that time, sir.

Q. You can't answer "Yes" or "No," then?

A. No, sir.

Q. Referring specifically to the language: "—but I am anxious to start producing and that would be the means of selling a lot of stock", were you not producing at that time?

* * * * *

A. I must have been producing then, sir.

Q. Have you any recollection of producing at that time?

A. Naturally, I was over there, and I was producing when I was over there.

Q. I didn't ask you that. I say, have you any recollection of producing at that time?

A. I said earlier this afternoon to you that we were over there, and we were producing in 1927. I think I have already answered that question.

Q. I am asking you in the light of this letter—

A. I can't recollect anything connected with that letter. You asked me whether I was producing around that time, and I say we were producing in 1927. I have no recollection in connection with that letter at all, but in 1927 there is no question in my mind that we were producing.

Q. On a big scale, is that right?

A. We had a dredge and a steam shovel, and another dredge waiting to be put up.

Q. You were operating on a big scale, were you?

* * * * * *

Mr. Samuels: * * * What is your answer to the question, Mr. Heiser?

A. We were producing sapphires, but what your opinion

might be on a big scale, and what my opinion is, might be two different things.

Q. What is your idea of operating on a big scale?

A. We had a dredge there and a steam shovel, and we were producing sapphires.

Q. How many men did you have employed?

A. Oh, I don't know; right offhand I couldn't tell you, but we had, I think, three shifts running on the dredger.

Q. How many men to a shift?

A. Oh, about four men.

Q. And on what property was that?

A. That was on the top mine.

Q. What was the name of the mine?

A. It had no name, as I said before.

Q. What area did it embrace?

A. Oh, I couldn't tell you offhand, sir, but it covered quite a considerable amount of ground.

Q. How much would you say is considerable?

A. Oh, acres and acres.

Q. How many, approximately? You don't have to tell me the exact number. Give me the number according to the best of your recollection.

A. I think there were eight claims in that block. Now, I am not positive, sir: I think there were eight claims in that block. I don't know the exact acreage in fact. There were eight private claims—I think there were eight private claims—there might have been nine, and there might have been seven in that particular block, and I couldn't tell you the exact number, but they were from ten to forty acres each.

Q. Well, then, you do remember, do you not—

A. That is hazy.

Mr. Samuels: Pardon me.

A. I beg your pardon.

Q. You do remember, do you not, that in 1927 you were operating a certain number of claims, that you had certain machinery at work, that you had three shifts employing four men each, but you do not remember whether or not any of the contents of that letter is accurate, is that right?

A. Well, one might write a letter ten or fifteen years ago.

but it would be almost impossible for me to remember what I had written fifteen years ago in a letter.

Q. I am not asking you what you wrote in the letter. I read certain clauses to you—

A. I—

Mr. Samuels: Listen to me, please.

A. I beg your pardon.

Mr. Samuels: I think it would be better if you listened to the question.

Q. I asked you each time whether certain things were correct, and you said you had no recollection.

A. That is right.

Q. I was not asking you in those questions whether you wrote those things, or whether they were correct—you understand that, do you not?

A. Yes.

Q. Now, I am asking you whether you can remember certain things at the same time in connection with certain claims, and how it is you can explain certain things, but yet you can't remember any of the contents of this letter concerning which I asked you questions—is that correct?

* * * * *

Mr. Samuels: I will ask you this:

Q. Can you explain, Mr. Heiser, how you can recollect the extent of your operations in 1929—pardon me; change that to 1927—on the eight pieces of ground referred to by you in Australia, and why you have no recollection of the accuracy of any of the contents of this letter, "Objector's Exhibit No. 3"?

* * * * *

A. I was just going to ask Mr. Samuels a question off the record.

Mr. Meyberg: No.

A. Then on the record: Why did Mr. Samuels make two statements about 1917, when he meant 1927? It is the same answer. Because you can't recollect. Now, Mr. Samuels, you cross-examined me, and you mentioned 1917 twice, and your friend here corrected you. Why did you make that

mistake? Why didn't you recollect? You couldn't recollect for two minutes, and you expect me to remember back twenty years.

Mr. Meyberg: Can you answer that question, Mr. Heiser I will put this question to him, and if he can answer it it will save a lot of time by letting him answer it.

Mr. Samuels: No. I will finish this inquiry. I want to make some progress here.

Mr. Meyberg: What was the question, Mr. Hart?

(Pending question read.)

A. Pardon me again. Would you mind giving me those dates again—the change of those dates?

Mr. Meyberg: Can you answer that question, Mr. Heiser—

A. Yes.

Mr. Meyberg: (Continuing:) —as to why you can remember one thing and not another?

A. Yes. In writing a letter, it is an incident—you dictate and sign it and send it off. The mines were my everyday life's work; I was there morning, noon and night on the property, and you would remember that because it was every day, but you wouldn't remember writing a letter. Maybe you would, and maybe you wouldn't, but I wouldn't.

Mr. Samuels: I asked you about the accuracy of the statements contained in the letter.

A. That is why I can't remember it.

Mr. Meyberg: The man stated that he didn't even remember sending the letter, although he may have sent it, and therefore he didn't remember the contents of it.

Mr. Samuels: Let us proceed further.

Q. With respect to the operations in 1927 of these eight parcels of ground which you have just testified to, are those according to the method of operating mines in Australia—large operations or small operations?

* * * * *

Mr. Samuels: What is your answer, Mr. Heiser?

A. Well, some would call it large operations, and others would call it small. It would all be a matter of opinion, sir.

Q. What is your understanding of operations of that size?

• • • • •

A. I would say it was a large operation.

Mr. Samuels: Q. A large operation?

A. Yes.

Q. Now, Mr. Heiser, during this period in 1927 in addition to operating the mines to the extent you may have, were you buying sapphires or any of the gems that you handled from persons or companies in Australia?

• • • • •

A. I couldn't say offhand, but it is just possible I was.

Mr. Samuels: Q. You have no recollection on that subject?

A. No, sir. Again I will say that was a long way back.

Q. Well, is it not the fact that on each of your trips to Australia on and after 1917, to and including the early part of 1928—I believe you testified you returned to the United States then—that you would buy your material in Australia or elsewhere?

A. We bought mined material, but I couldn't tell you the exact time, place or weights.

Q. I didn't ask you that. I just asked you if you bought materials?

A. I used to buy materials there, yes, sir.

Q. Did you buy more than you produced from your mines?

A. That I couldn't tell you offhand, sir.

Q. You couldn't tell me that?

A. No.

Q. You have no recollection of that?

A. No, not at present.

Q. Now, in 1927 and 1928 where did you have stocks of merchandise in the United States outside of what you have testified to in San Francisco?

• • • • •

A. As I said yesterday, sir, I couldn't recollect. I told you that three or four times yesterday. You asked me that same question yesterday, and I told you I couldn't recollect.

Mr. Samuels: I asked you—

A. You asked me three or four times yesterday the same questions, and I answered your questions, and now you are asking me the same questions today. I can't recollect where I had it stored.

Q. Did you have any stored outside of San Francisco during the two years in question?

* * * * *

Mr. Samuels: Q. What is your best recollection, Mr. Heiser?

A. I can't recollect, sir.

Q. You have no recollection?

A. No.

Q. Do you recollect whether you had any in New York?

A. Offhand, no, sir. There is no doubt I had, but I wouldn't like to say "Yes," and I wouldn't like to say "No." I can't recollect. There is no question but that I had material in London, Africa, Germany, and all over the world, and I can't recollect all those places at this time.

Mr. Samuels: I will see if I can refresh your recollection on that.

Q. Calling your attention, Mr. Heiser, to pages 268 to 269 of the testimony given by you in action No. 7,256-C Law, which was upon the proceeding of revaluation before Judge Cosgrave in Los Angeles, I will ask you if you recall giving the testimony which I am about to read to you, but first I want to advise you of a preliminary question so that you may get the context, so first I am reading from page 268:

"Q. By the Court: Mr. Heiser, these materials came, in the first place, to the 1915 Exposition at San Francisco, did they?

"A. Yes.

"Q. And they have been in the country ever since?

"A. Yes.

"Q. You were there in charge of that exhibit?

A. I will say over a ton of material.

Q. A ton of material?

A. Yes.

Q. Do you mean of all kinds?

A. Yes.

Q. But I am talking now about commercial. Do you know the quantity of commercial entering into it?

A. No, I couldn't give you the exact amount. I wish I could, but I can't.

Q. You can't tell me?

A. No, I can't. That was around the end of 1928?

Q. Yes, that is right.

A. Up to the end of 1928 or around 1929.

Q. I refer to the year 1928.

A. Yes.

Q. And if there were any changes after that time you can tell me.

A. Up to the end of 1928—

Mr. Meyberg: I happen to know that a portion of a ton was still there in 1935.

Mr. Samuels: I ask that be stricken.

Mr. Meyberg: If it will help anybody's recollection, or help in these proceedings.

Mr. Samuels: Oh, no, that is highly improper, Mr. Meyberg. I don't know that you are a witness in this case, or under oath, or testifying, and I ask that the volunteer statement of counsel be stricken from the record.

Q. You shipped, did you not, or caused to be shipped in the month of August, 1928, certain material from San Francisco to Los Angeles?

A. Yes, sir.

Q. Where were you in the month of August, 1928? Were you in the United States?

A. Yes, sir.

Q. Were you in San Francisco at the time of shippment, or were you in Los Angeles?

A. I am not sure whether I was—I wasn't in San Francisco, I don't think, during that period. I was in Los Angeles, and I think I was down in Arizona, and I think I was in

Nevada. I was moving backwards and forwards quite a lot, sir, at that particular period.

Q. I show you what purports to be a photostatic copy of an original bill of lading dated August 9, 1928, of the Steamer "Harvard," for 36 sacks mechanical corundum, weight 4,325 pounds; received from E. A. Lobree, and signed "E. A. Lobree, Shipper, by Mrs. Lillian Heiser," and ask you whether you have ever seen that photostatic copy before?

* * * * *

Mr. Samuels: Look at the instrument, and answer the question as to whether or not you have seen the original of that photostatic copy.

A. I am not sure.

Q. You are not sure?

A. I have seen so many papers in the last few months that I couldn't say for sure. Do you realize how many questions you have asked me in the last few days? Could you answer as to how many questions you have asked me in the last two days?

* * * * *

You can answer "Yes" or "No" whether you have ever seen the original of this photostatic copy?

A. This is a photostat, isn't it?

Mr. Samuels: Yes.

A. Now, I don't remember having seen a photostat like this.

Mr. Samuels: I said the original.

A. I may have seen it, but I can't recollect.

Q. You don't remember it?

A. No.

* * * * *

Mr. Samuels: Q. Did you know or authorize the shipment at or about August 9th, 1928, of the material described or referred to in this bill of lading, "Objector's Exhibit No. 4"?

* * * * *

A. Well, I haven't a very clear recollection on that, Mr.

Samuels, but there is no question in my mind that I ordered the stuff to be shipped.

Q. What is your best recollection on that subject?

A. I can't recollect it, sir.

Q. Well, if you ordered stuff to be shipped, from what storage did you order it to be shipped?

A. I couldn't say, sir.

Q. You couldn't say that?

A. I couldn't remember, no.

Q. I observe a valuation of $500.00 upon that material. Do you know whether you authorized that, or not?

A. I couldn't say, sir; I couldn't remember.

Q. Do you remember anybody who would place a valuation upon it without your authority?

A. Any one might have, sir.

Q. Well, it was done by some one man in your behalf in shipping, isn't that correct?

A. If I may explain about that: When we ship stuff to any part of the United States, we generally put a very low insurance on it because it has as much protection if you send it with $500.00 as if it were $50,000.00; it is all the same protection.

Q. What do you mean by insurance?

A. The valuation. Excuse me. If you put a $50,000.00 valuation or a $5,000.00 valuation or a $500.00 valuation, it has the same kind of protection. For instance—

* * * * *

Mr. Samuels: Will you read his answer to me?

(Record read.)

Mr. Samuels: Q. If your will note the language in this original bill of lading: "Not Insured. Shippers desiring Carrier to Insure at expense of shipper, owner and/or consignee must show insurance value and sign below."

* * * * *

Mr. Samuels: Q. Now, did you communicate to any one the valuation to place upon the shipment of corundum that was made from San Francisco to Los Angeles at or about this time?

A. Not to my knowledge, sir.

Q. You did not?

A. I said not to my knowledge.

Q. I see.

A. I thought you repeated "You did not?"

Q. Not to your knowledge?

A. That is what I said.

Q. Do you recall giving your wife—. I assume Mrs. Lillian Heiser is your wife?

A. Yes, sir.

Q. Do you recall giving your wife any instructions at or about this time with respect to a shipment of this material from San Francisco to Los Angeles?

A. No, sir, I can't recall incidents in connection with that. Pardon me. I don't know that she shipped it, but it says so there, but I don't know that even.

Q. Well, did you receive any material of this character at Los Angeles within two or three days after August 9th, 1928?

A. There was material which arrived in Los Angeles, but I couldn't tell you the exact date now offhand, and it was placed in the—

Mr. Samuels: No. I just asked you if you received it. Never mind where it was placed.

A. We received it right at the bank—at the vaults, and we put it right in the vaults, at the United States National Bank.

Q. Who did?

A. The men who carried it for me. They had to carry it. It was heavy stuff. It weighed over two ton, I think that says there.

Q. That is correct—4,325 pounds.

A. They did the carrying.

Q. Was it placed in your hands, Mr. Heiser?

Mr. Meyberg: When he says he received it, he means they carried it over to the United States National Bank, and the men carried it.

Mr. Samuels: Q. It was delivered to you?

A. It was delivered to me.

Q. Was it delivered to you at Los Angeles?

A. Yes, sir.

Q. It was?

A. Yes, sir.

Q. What was embraced in this 36 sacks of mechanical corundum?

A. Well, the exact details of it, sir, I couldn't recollect now, but I have a recollection that the drays—there was a big dray that came up to the curb, and I was notified about it—the bank notified me, and I came over to the bank. It is very hazy to me, sir. It was a long time ago. I remember going over there, and the stuff was carried backwards and forwards. They made several trips because the men carried the stuff on their backs.

Mr. Samuels: You have answered the question not once but several times.

Q. Do you not know that the freight rates of carriers are controlled in part by the valuation to be placed on the valuation of a shipment?

A. I don't know anything about that at all, sir.

Q. I show you what purports to be a receipt for freight delivered of the Pacific Electric Railway Company, dated August 13, 1928, of 36 sacks of mechanical ore, as it says here; insurance value $500.00, and at the bottom, "McMorrie" or "McMarrie"—I can't decipher which one it is—"Heiser," or "Heisen. Pio Truck Co—McArdle," with annexed photostatic copy to the following effect: "No. 13393-J. Re Golden State Gem, Bankrupt. Obj"—"Objection," I assume that is—"Heiser, Trustees. Exhibit No. 2. Filed 4/22 1932. Moss, Referee." And there is a further exhibit form, apparently deleted by signs or lines through it. I will ask you whether or not you have ever seen the original of which purports to be a copy?

(Document handed to the witness.)

Mr. Meyberg: You have no objection to my looking at it, have you, Mr. Samuels?

Mr. Samuels: Certainly not. I asked him first, and handed it to him, and then you can look at it.

(Document handed to Mr. Meyberg.)

Mr. Meyberg: It looks like somebody played tit-tat-toe on it.

(Witness examining document.)

Mr. Meyberg: Are you asking him if he recalls ever having seen this or the original of which that purports to be a photostatic copy?

Mr. Samuels: Yes.

Mr. Meyberg: I presume that is preliminary to something, too. Objected to for the reason it is immaterial whether he has ever seen it or hasn't. You may answer the question, Mr. Heiser.

A. No, I don't ever recollect having seen that.

Mr. Samuels: Not the copy, but I am talking about the original or a receipt of that character.

A. No sir.

Mr. Meyberg: It is possible that you may have seen it, Mr. Heiser?

A. I may have seen it, but I don't recollect having done so.

Mr. Samuels: Q. You have no recollection of it?

A. No.

Mr. Meyberg: Is that your signature on the bottom?

A. I don't believe it is.

Mr. Samuels: No, I don't believe that is his signature.

Mr. Meyberg: It isn't?

A. No.

Mr. Samuels: He would spell his name correctly, wouldn't he?

Q. Do you recall now whether or not the corundum which is referred to in the bill of lading, "Objector's Exhibit No. 4," was delivered at the bank you referred to in Los Angeles by the Pacific Electric Railway Company?

A. That I couldn't recollect.

Q. Would your recollection be assisted, Mr. Heiser, if I

called to your attention the language on this photostatic copy, "Point and date of shipment, 8 10 28."? Is there a number there?

Mr. Meyberg: August 10, 1928.

Mr. Samuels: One moment. I am thinking of something else. "E. A. Lobree." Let me call your attention to that.

(Mr. Samuels indicating to Mr. Meyberg and the witness.)

Mr. Meyberg: Now, what is your question?

Mr. Samuels: Q. Does that assist your recollection with respect to the receipt of it?

A. No, I can't recollect having seen that. I may have done so, but I have no recollection of it.

Mr. Samuels: Then we will offer in evidence as "Objector's Exhibit No. 5" the receipt just submitted to the witness.

Mr. Meyberg: To which we object on the ground it is immaterial, and no foundation laid, and not the best evidence.

(Receipts for Freight Delivered, dated August 13, 1928, marked "Objector's Exhibit No. 5.")

Mr. Samuels: Q. Do you recall, Mr. Heiser, whether as a portion of the shipment of mechanical sapphires which you state was delivered to you in front of or at the United States National Bank in Los Angeles, there was any commercial material?

A. I couldn't recollect the contents today, sir, of just what was in that parcel at that particular time; I couldn't recollect it exactly as it was.

Q. No. I am saying in addition to that was there any additional material?

A. Additional to what, sir?

Q. To the corundum. I have told you that. The question is clear. Read it to him. Do you want to have the question read?

A. Yes, please.

Mr. Meyberg: What was the question, Mr. Reporter?

(Pending question read.)

A. I think I made several shipments down to that bank, sir. It would be impossible to remember one particular shipment.

Mr. Samuels: One moment, please. You have answered the question.

Q. Your suit No. 7,256-C instituted by you against Leonard Woodruff in the United States District Court, Southern District of California, Central Division, was based upon, if I recall correctly, in addition to mechanical sapphires, a certain quantity of commercial sapphires, opals, zircons, and a piece of jade.

* * * * *

Mr. Samuels: Q. (Continuing:) Now, were the commercial items I have just named deposited with or stored with the United States National Bank at the same time that the mechanical sapphires were stored there?

* * * * * *

A. To the best of my recollection I had quite a lot of other gems there.

Q. Do you mean you had them sent from San Francisco, or that you had them in your possession in Los Angeles prior to the 13th day of August, 1928?

A. I am not sure, sir, on that; I can't make a statement on it, but I know I had the gems there.

Q. You know you had what gems there?

A. Different classes of gems—jade, opals, zircons, and sapphires.

Q. You refer to uncut commercial gems?

A. Uncut stones and gems.

Q. What is the distinction between uncut stones and gems?

A. I beg your pardon. Commercial stones and other gems—opals, sapphires and zircons, to be exact.

Q. Yes. That is what I asked.

A. I beg your pardon.

Q. They were all uncut, were they not?

A. Yes. I had some cut stones in the bank.

Q. I am not asking you about that.

A. You asked me if I had any stones in the bank, and I said yes, I had a lot of cut stones there.

Q. Did you make any sales of any of your commercial gems which were stored in the City and County of San Francisco, or in your possession in the City and County of San Francisco during the year 1928 and prior to August 13th, 1928?

A. Well, in 1928 I was in Australia, and in 1928 I was in America, and in 1928 I was in England, and in 1928 I was in Germany, and now it covers a lot of country, and it is almost impossible for me to answer all these questions you are jamming into 1928.

Q. You were in the United States at least from April, 1928, to and including August, 1928, were you not?

A. Yes, sir.

Q. That is correct, is it not?

A. I think it is correct. To the best of my knowledge it is correct.

Q. Yes. Now, during that period of time did you make any sales of the commercial material which was stored or in your possession in the City and County of San Francisco or Los Angeles?

* * * * * *

A. Well, I can't remember at that time if any were sold, or not, Mr. Samuels. It is very, very hazy to me, because it was such a crowded year that it is impossible for me to remember incidents like that. I could have done it, and yet I wouldn't remember it. It is impossible for me to remember it. You can readily understand that I left Australia, and I brought my family here—I think I brought my family here, or I met them here, and I left and moved on to London, and then I went to Germany and then to Paris.

* * * * * * *

Q. Did you not claim to have sold some of your commercial material during the month of May, 1928?

* * * * * *

A. I don't recollect whether I did or not.

Q. Don't you remember bringing a suit against Mrs. Graves?

A. Yes, I had a suit against Mrs. Graves, but I don't remember what passed there.

Q. Don't you remember—

* * * * *

Mr. Samuels: What is your answer, Mr. Heiser?

A. I said I didn't recollect, sir.

Q. You have no recollection as to whether you brought the suit?

A. I know I brought the suit, but I couldn't recollect the conditions that prevailed around the suit, and what I sold during that period.

Q. Do you recollect whether you sued upon a claim of sale to the defendant in that action of your gems for $40,000.00?

* * * * *

A. No—pardon me—they weren't. Now, Mr. Samuels—

Mr. Samuels: One minute.

Q. What do you mean by "they weren't"? Weren't they commercial gems? Didn't you sue for sapphires and other material?

* * * * *

A. They were cut gems that we sued for.

Q. Is not a cut gem a commercial gem?

A. They could have been commercial.

Q. Was I wrong in my designation?

A. Yes, you were very wrong.

Q. Why?

* * * * *

A. A commercial gem is a commercial stone, and a jewel is for a person's adornment. They are two different things as different as chalk and cheese. You couldn't make a lead pencil without a sapphire; you couldn't have telephones, clocks or submarines without a sapphire.

* * * * *

Mr. Samuels: How can I identify, according to technical distinctions, Mr. Heiser, material which is intended solely for industrial purposes, and material which may be made up into rings or bracelets, or any type of jewelry?

A. One you would say was gems and gem material, and the other you would say was industrial or corundum. You could have a commercial sapphire or a commercial ruby.

You could have the best gem in the world, and it would be corundum, or you could have corundum and it would still be industrial, and it would also be a gem.

Mr. Samuels: I am trying to distinguish between industrial and commercial. Industrial couldn't be a gem?

A. Yes, it could.

* * * * *

Mr. Samuels: Q. Now, do you recall whether or not that action against Mrs. Graves was based on the alleged claim by you of the sale to Mrs. Graves of some $40,000.00 worth of your gems?

A. Yes, it was, sir, according to the best of my recollection—gems delivered according to the best of my recollection, yes, sir.

Q. Did those gems come from your San Francisco stored collection in the vaults of the Wells Fargo Bank, or were they stored elsewhere?

A. I couldn't say exactly where they came from now, sir. That was ten or twelve or fifteen years ago.

Q. Do I understand your testimony that those were cut stones?

A. Cut gems.

Q. I am talking about 1932.

A. Please don't correct me, Mr. Samuels.

Mr. Meyberg: Counsel can make a mistake.

Mr. Samuels: I referred to the year 1928 when I asked you with reference to between April and August, of 1928, if you will recall.

A. No, I can't recall the conditions in relation to it—where they came from, or what part they came from.

Mr. Samuels: All right.

Mr. Meyberg: I understand both of you are talking about sapphires that were cut stones.

A. Yes, cut and polished.

Mr. Samuels: I don't know whether they were cut or polished. The result was that there was a judgment against the plaintiff to the effect that there was no sale of stones.

A. To the best of my knowledge there were a lot of cut stones, and there was one bag of very fine blue sapphires.

Mr. Meyberg: Just a minute. There is no question before you. Let us not just keep on talking here. There is no question propounded to you. Pardon me. That can go out. Mr. Samuels and I were talking here. Now, go ahead, Mr. Samuels.

A. I beg your pardon.

Mr. Meyberg: Go ahead, and let us get along here.

Mr. Samuels: Q. This material which was delivered to you at the bank in Los Angeles on or about, we will say, the 13th day of August, 1928, was placed in storage in that bank, wasn't it?

A. Yes, sir.

Q. That was the United States National Bank?

A. That is right, sir.

Q. In whose name was the storage receipt issued?

A. I couldn't tell you today, sir. I haven't the slightest idea. Possibly my own.

Q. What is your best recollection on the subject?

A. I haven't any recollection on that at all.

Q. It is your recollection, is it not, that it was stored in the name of either yourself, or yourself and California Gem Company, or yourself and Walter Calvin Smith, is that true—one of those combinations?

A. No, I haven't any recollection on that at all, sir.

Q. You haven't any recollection on that at all?

A. No. No matter what I did, I wouldn't be able to remember that, sir.

Q. In your complaint No. 7,256-C, the action which has been identified any number of times in the record—so we will limit ourselves simply by the number of the action—

Mr. Meyberg: That is the action of Heiser vs. Woodruff upon which the judgment was rendered?

Mr. Samuels: There is no purpose going beyond that. I assume that is the only complaint No. 7,256-C filed by Mr. Heiser against Woodruff.

Mr. Meyberg: That is right.

Mr. Samuels: That is correct, is it? The record won't show a nod of the head. Have you got the answer, Mr. Reporter? You simply nodded your head.

Mr. Meyberg: There was only one complaint in that action, and that was the complaint upon which this judgment was rendered.

Mr. Samuels: I know that, but I am trying to prevent going through the necessity of describing it each time.

Mr. Meyberg: You can refer to it as the complaint in action No. 7,256-C, filed by Mr. Heiser against Woodruff, which was the complaint on which judgment was rendered in this action.

Mr. Samuels: The more you can get in that judgment the stronger your case, I suppose.

Q. I will refer particularly to paragraph VI—

Was there more than one cause of action?

Mr. Meyberg: Yes, there are three causes of action, I think, if I remember correctly.

Mr. Samuels: I am referring to paragraph VI, on page 2. You allege that you were the sole and exclusive owner of certain raw gems known as sapphires, zircons, opals and jade. And by "raw" I assume you meant uncut, is that right?

A. Yes, sir.

Q. And you specify 35,000 ounces, more or less, mechanical industrial rough sapphires; 1200 ounces blue sapphires rough; 1,000 ounces star sapphires rough; 1200 opals black and light, rough—

A. Pardon me. 1200 ounces it says, doesn't it? Not 1200.

Q. 1200 ounces.

A. You said 1200.

Q. Then I missed it.

A. I beg your pardon.

Q. 1200 ounces opals black and light, rough; 1,000 ounces —I see why, "ounces" is stuck in in ink here; 1,000 ounces

zircons rough; 1 piece jade 28 pounds. Now, do you know whether—

* * * * *

Mr. Samuels: Q. Now, do you know whether the blue sapphires, star sapphires, opals and zircons, or any of them, were included in the same storage with this 35,000 ounces of mechanical industrial rough sapphires?

A. They were all in the same room according to the best of my knowledge—in the vault downstairs in the United States National Bank. I think it was at 8th and Spring Streets, in Los Angeles, but I am not positive of the exact corner; I think it was there. Since then the bank has closed, but it was downstairs. As I tried to tell you before, the men carried each of these packages down on their backs.

Q. And that was open storage, was it?

A. In a vault.

Q. I mean it was not in a safety deposit box?

A. It was a big room where the bank kept their money—in the same big room.

Mr Samuels: I am not questioning that. Will you please listen to my question.

Q. The material I have just referred to was not placed in a safety deposit box, was it?

A. Oh, it was impossible to do that.

Q. They were very large quantities?

A. Yes, very large quantities.

Q. And they were in what form of container?

A. Now, according to the best of my knowledge the industrial stuff was in sacks—ordinary sacks; and we had a habit of sending the gems—

Mr. Samuels: Never mind. You have told me what you had. Never mind your habit.

A. I beg your pardon.

Mr. Samuels: I think your counsel will tell you that you have answered according to the best of your knowledge that they were in sacks.

A. No. I said the industrials were in sacks.

Q. The industrials were in sacks?

A. The industrials were in sacks, and the gems, such as the blue sapphires and the star sapphires and the zircons, we had a habit of always placing those in tins and sealing them, and placing the tins within a sack.

Q. You said you had a habit of doing that. Was that true in this case according to the best of your knowledge?

A. According to the best of my knowledge, yes.

Mr. Samuels: I ask that what the witness testified to as "habit" be stricken out as not responsive.

Q. Your testimony is, as I take it, they were in tins placed in a sack, is that right?

A. The gem material was in tins placed in sacks, and the industrials were in bags ordinarily because they were cheaper material.

Q. Now, then, were they all stored there according to the best of your knowledge at one time—these different items that I called to your attention—or were they stored there at different times?

A. I have a hazy recollection that we took some of the tins, that were in bags up in a car separately.

Q. From where?

A. From down here, but that is very hazy, Mr. Samuels?

Q. Who are "we"?

A. Well, my wife was driving the car—or, I am not sure whether it was my wife—it was a friend of mine that came from Australia. At that time I brought Australian teddy bears over here, and Mr. Archie Johnson—

Mr. Samuels: This is all immaterial.

A. You asked me who are "we," and I am trying to explain to you.

Mr. Samuels: You have answered.

A. I can't say who it was, then, because there were five or six men riding to Arizona, Nevada and Los Angeles with me, all during that period.

Q. Were you in the car?

A. One or two of the times I was in the car, yes.

Q. What is that?

A. One or two of the occasions I was in the car.

Q. I am talking about the time of transportation of any of this material which I have designated.

A. I am trying to tell you that we took a couple of those bears along, and we had those gems in the back of the car, and the bears were on top of them; the bears were loose in the car.

Q. When you say "we," whom do you mean?

A. I can't remember.

Q. Were you present?

A. Yes, naturally.

Q. And you started from where?

A. Now, I am not positive what part of the city we started from.

Q. Did you start from San Francisco?

A. Yes, we started from San Francisco.

Q. All right. And when was it by comparison with the 9th day of August, 1928?

A. That I couldn't tell you. I wish I could tell you, but I can't remember that. I have been trying to remember it since speaking to you. I can't remember it; I wish I could.

Q. Was it before or after that date?

A. I was trying to think of that bear thing.

Q. Was it before or after the date I mentioned?

A. I couldn't tell you, sir. I think—

Q. One moment. Was the material taken from the vaults of the Wells Fargo Bank?

A. That I can't remember, sir. I have been trying to remember it. I have been going over papers which I have; I have been here trying to refresh my memory on it.

Q. You haven't found any papers?

A. Yes, I found one paper which I will show you in a minute or two.

Q. Where is the paper you wish to show me, Mr. Heiser?

A. I can't think where it was, though.

Q. Do you wish to show me a paper?

A. Yes, I have a paper which I would like to show you, and that I ran into. It is about the Exposition and the materials.

(Thereupon the witness handed document to Mr. Samuels.)

Q. Oh, you mean a newspaper article?

A. Yes, sir.

Mr. Samuels: Very interesting.

A. Well, it just shows about the Fair.

Mr. Samuels: It is not before the Court at the present moment. If your counsel desires to submit it at any stage, it will be subject to proper objections.

Mr. Meyberg: You asked him for it.

Mr. Samuels: I asked him if he wanted to show me a paper.

A. And you insisted upon it.

Mr. Samuels: I insisted upon it?

A. You asked me three times for it.

Mr. Meyberg: Now, he has shown you a newspaper clipping about himself at the Exposition.

Mr. Samuels: Don't try to get it before the Court in that manner. You can offer it in due time.

Mr. Meyberg: I don't think it is material, but it shows that he was at the Exposition.

Mr. Samuels: I don't deny that he was at the Exposition.

Mr. Meyberg: And that he was an exhibitor there.

Mr. Samuels: I haven't denied that he was an exhibitor.

Mr. Meyberg: It is a clipping from a San Francisco newspaper.

Mr. Samuels: We move that the remark of counsel as to any contents of a newspaper clipping be stricken from the record as hearsay, improper and wholly immaterial.

Now, what was the last question? Oh, yes. We were discussing, or trying to get from you whether any of this material was removed from the Wells Fargo vaults, and you said you didn't know.

A. I don't know whether it was in the Wells Fargo Bank vaults then, or where it was, because I am not sure that it was there all of the time at the Wells Fargo Bank.

Mr. Samuels: All right.

A. I don't know what vault it may have been in at that particular period of time.

Q. Did you have material of this type in any other place in the City and County of San Francisco in the month of August, 1928?

A. Well, I told you yesterday several times that I couldn't recollect. You asked me that question about a dozen times—that same question. I have been telling you I can't recollect it. I have been trying to do so.

Q. What material did you take with you on this trip in the automobile from San Francisco—I assume it was to Los Angeles, was it?

A. Yes. Well, I said before I think we took it in the automobile, but it is very hazy; I am not sure, but I believe we took the gem material down there.

Q. How much of the gem material?

A. I couldn't say right offhand, sir, it is very hazy.

Q. Did you take all of the gem material on this trip—the 1200 ounces of blue sapphires, the 1,000 ounces star sapphires, the 1200 ounces of opals, black and light, rough; 1,000 ounces of zircons, and 1 piece of jade, 28 pounds—did you take them all on this one trip?

A. That I am not sure of, sir. I have a hazy recollection that we took it down by car.

Q. Took it, or took what?

A. Took the gems down by car, but I am not sure of it. I can't recollect exactly how we took them.

Q. Did you drive?

A. No, I didn't drive. I very rarely drive in this country, because I am an Australian, and drive on the left, coming from Australia.

Mr. Meyberg: All he asked you was if you drive, and if you don't, all you have to say is "No."

A. I very rarely drive.

Mr. Samuels: That doesn't mean anything when you say you drive on the left.

(Portion of record deleted by consent of counsel.)

Q. You don't know when you started on that automobile trip, do you, if you took it?

A. I beg your pardon?

Q. I say you don't remember the date of the start of that automobile trip, do you?

A. That is not what you said. "If I took it," you said. I said I took it. I don't like that.

Mr. Meyberg: I think you stated you didn't recollect whether you went down on that trip, or not.

Mr. Samuels: That is right. You said you didn't know whether you went, or whether your wife drove.

A. You asked me if I took it.

Mr. Samuels: Then I was inaccurate in my statement.

A. Well—

Mr. Samuels: Now, one moment.

Q. Who else was in the car besides your wife, if you recall?

A. I didn't say my wife was in there. I said I thought she probably was, but I wasn't sure.

Q. What is your best judgment on the subject?

A. I can't recollect. I tried to explain it to you.

Q. Have you any judgment on the subject? Have you any belief on the subject?

A. Well, I went down there, and as I told you I took the bears. I think I made two or three trips, and these bears were with me, and the gems were with me on one of those trips.

Mr. Samuels: I move to strike that answer as not responsive to the question. I will ask you this question, and will you please listen to the question:

Q. Have you any recollection of whether your wife went with you on that trip?

A. No, sir, I can't recollect it.

Q. Have you any recollection of who else was with you on that trip, if anybody, or whether you drove alone?

A. No. There were people with me, but I can't recollect who they were.

Q. You do not know the name of any one who was with you?

A. One chap was from Australia, but I can't think of his name now.

Q. Have you any recollection of the make of the car, Mr. Heiser?

A. It was a big car. We had a Dodge, and we had a—it was a big car. They changed the name of it—they changed the name of the car, because it had some adverse—

Q. Have you any recollection of the name of the car? If you haven't just say "No." That is all.

A. I am trying to think, sir. I can only do my best.

Mr. Samuels: I interrupted you, because I want you to answer the question.

A. You are asking me the make or name of a car that I had twelve years ago. I am trying to do the best I can.

Mr. Samuels: I can tell you the make of every car I had.

A. I noticed you didn't have the right date several times.

Mr. Samuels: Go ahead and answer the question.

A. It was a Jewett. Yes, that was it. It was a big Jewett: it was super-powered, and a Graham-Paige engine was in it. That is right.

Q. Was it open or closed?

A. It was a closed car, because we let the bears run around. Now, it comes back to me.

Q. Were they live bears?

A. Yes, live teddy bears—Australian teddy bears.

Q. And they were running around the car?

A. Yes. We put them on those eucalyptus sticks. You have to get instances to make you think back like that. I can't do it otherwise. We had eucalyptus sticks in there, and we tied them to these tins, and the weight of the tins kept the sticks up.

Mr. Samuels: That is all immaterial, and we move to strike out about the teddy bears and the weight of the tins.

A. Well, it was a Jewett car.

Mr. Meyberg: Just a minute. Counsel is making a statement, and he is not asking you any question.

Mr. Samuels: I move to strike the witness' answer on the ground it is not responsive and not explanatory.

Mr. Meyberg: Just answer the question, Mr. Heiser.

A. I am sorry.

Mr. Samuels: Q. Have you any recollection of how long it took you to drive from San Francisco to Los Angeles, or did you drive through directly, or did you stop en route overnight?

A. I couldn't recollect, sir; I couldn't recollect that.

Q. Well, bearing in mind the fact that you were in Los Angeles at the United States National Bank when a certain shipment of industrial sapphires were delivered to that bank—

A. Yes, sir.

Q. Had you arrived at Los Angeles before the delivery of that shipment?

* * * * *

Mr. Samuels: Let us refer to it as a "shipment".

Mr. Meyberg: That is all right, if you refer to it as a shipment.

Mr. Samuels: Q. It was a shipment of mechanical industrial sapphires received at the bank, is that correct?

A. Yes, sir.

Q. Now, with respect to that shipment, and the time of receipt or delivery at the bank, had you arrived in Los Angeles before or after that time with your automobile containing any of the additional material set forth in paragraph VI of the complaint previously identified?

* * * * *

A. I couldn't say for sure, because I made several trips to Los Angeles before that, and several trips after that, and I couldn't tell you exactly; it would be impossible for me to tell you exactly whether it was before or after because there was so much movement at that period, and I couldn't identify one period from another with the stuff.

Q. Did you make more than one trip to Los Angeles with any portion of this additional material—referring to the material mentioned in paragraph VI of the complaint—and by "additional", eliminating the mechanical industrial rough sapphires?

A. I couldn't say right off, sir.

Q. What?

A. I couldn't say right off. It is difficult to remember those things under the circumstances that I was moving around under.

Q. Do you know whether or not one storage receipt was issued by the bank for all of the material enumerated in paragraph VI of said complaint?

Mr. Meyberg: What was that question?

(Pending question read.)

• • • • •

A. I couldn't recollect about the receipt, sir.

Mr. Samuels: You couldn't?

A. No, I couldn't.

Mr. Samuels: Well, we will have to go beyond that for the moment. We will return to the warehouse situation after we have examined these depositions a little more carefully, and we will see if we can refresh your recollection.

Q. I call your attention, Mr. Heiser, to page 244 of the transcript of the testimony given upon the revaluation proceeding before Judge Cosgrave in action No. 7,256-C-Law, and particularly to the following question and answer:

"Q. Now, I will ask you if the 36 sacks, with the weight of 4325 pounds, is the gem material referred to in this action?

"A. The gem material referred to, yes, sir."

Do you recall that question and that answer?

A. I don't recall the question or the answer, sir.

Q. Do you recall in that connection upon that revaluation proceedings that a bill of lading was submitted to you, and that you were asked to identify your wife's signature there?

to, Mrs. Lillian Heiser, and that you identified her signature?

* * * * *

Mr. Samuels: Q. Do you recall that?

A. No, I don't recall it, sir.

Mr. Samuels: Well, I will read you the questions. Preliminarily I will ask you—there is no use putting this in the record.

Q. Your wife's name is Lillian Heiser, and you were married to her in August, 1928. To which you responded in both instances, "Yes."

Then you were asked a question on page 243:

"Q. You would, of course, recognize her signature, I take it?

"A. Yes, sir.

"Q. I will identify the signature. I will ask you if, at the bottom of this yellow sheet that I am now exhibiting to you, the signature, Mrs. Lillian Heiser, is the signature of your wife.

"A. I think it is, sir.

"Q. You know your wife's signature, don't you?

"A. Yes.

"Q. It is your judgment that is her signature?

"A. Yes; it looks like it, sir."

Do you remember that testimony?

A. I don't remember the testimony, sir, but it sounds as if it could be right. There was so much asked me in that trial, and this trial, that it is almost impossible for me to remember that kind of an incident; it is impossible for me to remember it anyhow.

Q. Do you recall this testimony:

"The Court: What is the nature of the document?

"Mr. Peterson: It is a storage receipt, isn't it?

"A. You didn't let me read it; you just showed me the signature.

"Mr. Peterson: It is a storage receipt, a bill of lading and storage receipt.

"The Court: Issued by a steamer?

"Mr. Peterson: It should show at the top.

"The Court: It appears to be received from C. A. Lobri,—"

That is spelled L-o-b-r-i.

"—to be forwarded, in whole or in part on the steamer Havre,—"

Evidently that means "Harvard."

"—or such other steamer, and so forth,—very well.

"Mr. Meyberg: I think it is a bill of lading, your Honor."

Do you recall that testimony, and those statements at that hearing?

A. No, I just can't recall them, sir.

Mr. Samuels: This must have been annexed to it. (Indicating document.)

Mr. Meyberg: I don't know what you are referring to, Mr. Samuels, and I don't know that the record does.

Mr. Samuels: Q. "Mr. Meyberg: It was a receipt also?

"Mr. Beveridge: Yes.

"Mr. Peterson: I want the bill of lading marked as the first exhibit.

"The Clerk: That will be Defendant's Exhibit E."

Do you remember that transpiring?

A. No, I can't remember it.

Mr. Meyberg: Just a moment.

Mr. Samuels: Q. Now, in light—

* * * * *

Mr. Meyberg: Very well. Proceed.

Mr. Samuels: Q. Now, listen to this, if you will, kindly, from page 245, Mr. Heiser:

"Mr. Peterson: For the purpose of the record—it may be something else, but for the purpose of the record, so that the court may be acquainted with what this shows, it shows 36 sacks of mechanical corundum of a weight of 4325 pounds. The person signing it appearing to be Mrs. Lillian Heiser.

and her statement as to the value of the shipment is $500.00, and the document also shows that the shipment was not insured. If you have anything else you want to call to the court's attention, I will let you do it."

Do you recall that statement by Mr. Peterson?

• • • • •

Mr. Samuels: Q. In light of—

Mr. Meyberg: Wait a minute. He didn't answer the question. You want an answer to the question, don't you?

Mr. Samuels: Will you answer the question?

A. May I have the question read?

(Pending question read.)

A. I can't recollect those things, Mr. Samuels.

Q. Well, do you recall now a yellow instrument having been presented to you on that hearing for identification of the signature of your wife?

• • • • •

A. I don't remember, sir.

Q. You don't recall at all?

A. There were so many instruments shown to me that I don't remember.

• • • • •

Q. Now, referring to the testimony I have brought to your attention, namely:

"Q. Now, I will ask you if the 36 sacks, with the weight of 4325 pounds, is the gem material referred to in this action?"

And your answer: "A. The gem material referred to, yes, sir."

Referring to that question and answer, can you now state whether or not the gems were included as a portion of the mechanical industrial rough sapphires in the shipment in question?

• • • • •

Mr. Samuels: What is your answer, Mr. Heiser?

A. I would like the question read again.

Mr. Samuels: Certainly.

A. If you don't mind, sir, I would like to have it read again. It is awfully confusing to me.

Mr. Samuels: Any time you want a question re-read to you, it will be read to you without further statement from you.

(Pending question read.)

A. Included where?

Q. Included in the shipment in question.

A. What shipment?

Q. That is the shipment of 4325 pounds.

A. Included where and when?

Q. There was one shipment made only, and it was being discussed, Mr. Heiser, and that is a shipment which was evidenced by an instrument shown to you.

A. When would it be included?

Q. That was a portion of the shipment made at the time.

A. At the time of shipment from where?

Q. From San Francisco on August 9th, 1928, to Los Angeles, aboard the Steamer "Harvard."

Mr. Meyberg: Mr. Samuels read you a question and answer, Mr. Heiser, and if the reporter will re-read it to you again maybe you will follow it. He is referring back to that question and answer. Is that correct, Mr. Samuels?

* * * * *

A. If this gentleman will re-read the question, I may be able to answer it.

(Pending question read as follows:

"Q. Now, referring to the testimony I have brought to your attention, namely:

"Q. Now, I will ask you if the 36 sacks, with the weight of 4325 pounds, is the gem material referred to in this action?'

"And your answer: 'A. The gem material referred to, yes, sir.'")—

A. Yes, that is true.

* * * * *

Q. I am asking you now whether in light of that question and your answer, can you state whether or not this shipment on th Steamer "Harvard" on August 9th, 1928, of 36 sacks o mechanical corundum, 4225 pounds, included the material of 1200 ounces blue sapphires rough, 1,000 ounces star sapphires rough, 1200 ounces opals black and light, rough, 1,000 ounces zircons rough, 1 piece jade 28 pounds, or any portion of that additional material I have just read to you at length.

A. Well, I believe it was all—it is hazy to me, about which was which, and what was what in that parcel, but I believe it was all included in the vault, and it came up there, but I don't remember exactly how it was shipped.

Q. I asked you if in that shipment any of the different items I have just read to you from your complaint were included?

A. Any of the different items?

Q. Yes, that I just read to you—the 1200 ounces blue sapphires rough—. I will take them separately.

A. Yes.

Q. Were they or any portion of them included in that shipment?

A. I think they were, but I am not positive of quantities or amounts.

Q. The shipment I am referring to is the shipment on the Steamer "Harvard"—do you understand that?

A. Yes, sir.

Q. All right. I do not want to confuse you at all.

A. You see, I am a little hazy.

Q. Give me your best judgment. The 1200 ounces blue sapphires rough, were they any portion of the shipment?

A. Yes, it is just possible that they could all or a part of them have been. It is hazy to me at present, but the whole lot could have been shipped with those bags, and yet some part might have been taken in a motor car, as I said previously.

Q. What is your best recollection as to which method was employed in the shipment or transportation of the material?

A. Oh, I couldn't say. As I said before, it is awfully hazy to me, Mr. Samuels.

Q. Then you have no definite recollection on the subject at all?

A. I have a recollection of the stuff coming there, as I said before, but the direct shipment of it I couldn't tell you exactly, no, sir.

* * * * * *

(Thereupon an adjournment was taken until Thursday, August 28th, 1941, at 10:00 o'clock A. M., and by consent of counsel to be resumed at the same place.)

Room 1700, 333 Montgomery Street, San Francisco, California, Thursday, August 28th, 1941, 10:00 A. M.

* * * * *

Examination by Mr. Samuels (Resumed).

Mr. Samuels: What subject were we last on, Mr. Reporter?

Mr. Meyberg: The reporter might read the last question and answer.

(Record read as requested.)

A. Well, now, Mr. Samuels—

Mr. Samuels: Go ahead, sir.

A. I have a definite recollection on that matter. It was all shipped in that shipment. I am definitely positive of that, now.

Q. All right. Now, you were in error when you stated that you believed that a portion of the shipment—and I refer by a portion to the material outside of the mechanical industrial rough sapphires—was transported by you in an automobile?

A. What was transported by me in the automobile was cut gems, opals, sapphires, zircons, and some crystals—rock crystals; they were in tins.

Mr. Samuels: I am still in doubt. I am sorry to repeat this question, but you want it clear, and so do I.

A. I am sorry.

Mr. Samuels: Apparently this will be repetition, but I will ask you again—

Mr. Meyberg: You go right ahead. It is apparently confusing to both of you the way the record stands now.

Mr. Samuels: Yes.

Q. When you say they were all included in one shipment, do you mean simply the mechanical industrial rough sapphires?

A. No, I mean the 1200 ounces of blue sapphires, and the 1,000 ounces of star sapphires, the 1,000 ounces rough zircons, and the 1200 ounces of opals, black and light, rough, and the piece of jade.

* * * * *

Q. Calling your attention to the transcript of the testimony in case No. 7,256-C-Law, previously identified, and particularly page 263 thereof, I would ask you whether you recall these questions and answers, commencing on line 4:

"Q. Did you have any insurance on that property at the time that it was being shipped on the steamer?

"A. I think I had an insurance, sir, at that time.

"Q. I must know what the fact is.

"A. I think we carried insurance on it, sir, a truck policy in Lloyd's. I carried a policy in those days, a Lloyd's policy; protection against all merchandise, from London."

Do you recall that testimony?

* * * * *

(Recess; pending question read.)

A. It is not very clear to me, sir.

Q. All right. Did you carry insurance upon that merchandise which was shipped on that steamer?

A. I am not positive. We had a block policy.

Q. Who are "we"?

A. Myself. I carried a block policy myself.

Q. What is a block policy?

A. A block policy means that it covers it in transit. They call it "block" in Australia. That is the wrong word there, you see, but I suppose that was just a clerical error.

Mr. Samuels: That was an error, and you are correcting that properly.

A. Yes.

Q. "Q. You say you think you had a policy?

"A. My brother-in-law generally kept those up for me, but that is an Australian policy."

A. That is "Australian brother-in-law."

Q. Who is your Australian brother-in-law?

A. Bill Ives.

Q. Then that was not handled by Mr. Lobree, your brother-in-law?

A. No, sir.

Q. He had nothing to do with that at all?

A. No, sir, he had nothing to do with that at all.

Q. And that is your best recollection?

A. Yes, that is my best recollection.

Q. Do you know the amount of the policy?

A. No, not offhand, sir; I couldn't tell you; I couldn't recollect it now.

Q. Have you a copy of the policy?

A. No, I haven't, sir.

Q. Have you maintained the policy in effect since?

A. No, it lapsed I think when I got to London. It was just a twelve months' policy or a six months' policy. It was merchandise covered in transit.

Q. And you haven't covered your merchandise since?

A. No, I haven't covered it, sir.

Q. With respect to this material which was stored in San Francisco—and I am going to refer particularly to the mechanical industrial rough sapphires—that had its greatest value, did it not, during the war period?

A. Well, it is generally during war period, but sometimes when industrial booms take place, sir, it becomes valuable.

Q. But the likelihood of sale in substantial quantities was greater, was it not, during a war period than during normal times?

A. Well, during war period or just before it, yes, sir.

Q. You did not endeavor to sell any of this material—I am talking now about the mechanical industrial rough sapphires—between 1915 and 1928?

A. I was shipping my material that we had sales for from Australia. We were shipping from Australia, sir.

Q. And you allowed the stock to remain—by the stock I am referring to the stock in San Francisco—to remain intact, is that right?

A. Yes, sir.

Q. Was the market for that stock more favorable in the United States or abroad?

A. Generally abroad, sir, because the labor was cheaper in Germany, Switzerland, Belgium and Holland, and the apprentices work with the artists, and they learn to make the jewels, and they are shipped back finished to this country.

Q. And that applied both to war periods and normal periods?

A. Yes, very forcibly to war periods. For instance, America today is very, very short of finished products of that particular kind; it is rather a serious shortage at the present time.

Q. Wasn't the cost of cutting this rough material—I am referring again, until I change the designation of it, to the mechanical industrial rough sapphires—

A. Yes, sir.

Q. (Continuing:) —greater in the United States than it was abroad?

A. Was the demand greater?

Q. No, the cost of cutting it?

A. Oh, yes.

Q. And is it not a fact that the cost during the period of time, we will say, while you held this material in San Francisco, was almost prohibitive—the cost of cutting?

A. Yes, sir; that is why it wasn't cut.

Q. And that is why the market for it was also very restricted, is that not true?

A. Yes, sir, the market was restricted to the rough material.

Q. That is what I am talking about.

A. Yes, sir.

Q. I am limiting myself to the rough material.

A. Yes, sir.

Q. Therefore, it would have been very difficult, would it not, to have marketed this rough material of mechanical industrial rough sapphires during the year 1928 at a dollar an ounce?

A. No, we were selling quite a lot of sapphires of that class to Germany and Switzerland for a little over a dollar—five and six pence, I think we were getting.

Q. I am speaking of in the United States. My question should have included in the United States.

A. Well, maybe around that time—

Q. No. Can't you answer that first without your explanation?

A. Well, pardon me.

Q. Then you can give your explanation. That is the preferable way, I think.

A. No.

Q. What explanation do you want to give, or is your answer "No"?

A. My answer is no, it was not difficult.

Q. It would not have been difficult?

A. No. We could have sold to a group in New York all of that stuff, but they wanted to give us notes, and I couldn't afford to take notes at that time, and they offered us a little cash. I think it was the Precious Stone Corporation—I can't recollect exactly or clearly the name.

Q. When you say "we could have", you mean you had received an offer for a certain quantity of mechanical industrial rough sapphires—

A. Yes, sir.

Q. (Continuing:) —in the year 1928?

A. In 1928, yes, sir.

Q. In the year 1928 from a group in New York?

A. Yes, in 1928. I think it was—I can give you almost the month—the month I can give you too—it was in September, 1928. It was a few days before I sailed for England. That is why I know so clearly.

Q. Who constituted the group?

A. The Precious Stone Corporation they call themselves.

Q. Was it a corporation, or were they individuals?

A. That I didn't know, sir.

Q. Whom did you deal with?

A. I met a man—I think his name was—I am not positive, but I think his name was Stone. He was the president.

Q. That was an appropriate name.

A. I think he belonged to one of the big institutions in Philadelphia.

Q. You say you think. Do you know?

A. He claimed he did, but I hadn't met him there.

Mr. Samuels: I move to strike that out—he claimed to belong to one of the big institutions.

Q. Have you his first name?
A. No, I have forgotten it now, sir.
Q. Do you know where he lives now?
A. No, sir.
Q. Is he engaged in the jewelry business or gem business?
A. That I couldn't say.
Q. Was he at that time?
A. Oh, yes, he was at that time.
Q. Where?
A. In New York City.
Q. Where in New York City?
A. I am not positive—I am not sure. They had a factory in Brooklyn or New Jersey. It was right near the city, because I went by "sub" to it.
Q. Was he doing business under the name of—what was the name of that company again?
A. It was Precious Stone or Precious Gem. I couldn't recollect it for sure, now. You know, it is hard to remember those names exactly, sir.
Q. Did he communicate with you by writing?
A. No. I got his name out West here, and I went to New York and saw him, and I was with him on and off several days.
Q. Don't you recollect whether it was in New York City or Brooklyn?
A. I met him in New York—in the City of New York, and he was in one of the districts—I couldn't recollect which district it was, sir; no, I couldn't remember that.
Q. And did you meet anybody else at that time—you referred to the Big Four—associated with him?

Mr. Meyberg: What was the reference to the Big Four?

Mr. Samuels: Not the Big Four, but the Four.

A. I didn't say anything about Four, sir.
Q. Did you meet anybody else of the group?
A. Oh, I met his—
Q. Did you meet anybody else of the group?
A. With that gentleman I must have met—
Q. "I must have." Do you recall?

A. I recall sitting around a table with quite a few important gentlemen there.

Mr. Samuels: I move to strike out the word "important" as being the conclusion of the witness.

A. Well, I met several gentlemen with this particular man, but I couldn't recollect their names.

Q. And what quantity was under discussion which they were prepared to purchase?

A. They were talking of my output.

Q. Of what?

A. Of my output—all that I could produce.

Q. All you could produce. And they were willing to give you a note?

A. No, they wanted to give me some cash and a paper. And I went to the bank with somebody—I don't know who it was—and they wanted to give me part cash and part paper. Now, I am just trying to think—it may be strange, sir—this sounds strange, sir, but I think I met that gentleman through your brother.

Q. Where?

A. In this office—in the office he had then. It was a long time ago.

Q. The office he had here in San Francisco?

A. Yes. Before he died I met him. I came in from Australia in connection with a very important matter on gems.

Mr. Samuels: One moment. I move to strike out "I came in from Australia in connection with a very important matter", on the ground it is a conclusion of the witness.

A. Pardon me. Mr. Lobree introduced me to your brother, and I think your brother gave me some names in New York—a letter to some one in New York.

Q. A letter to some one in New York?

A. Yes. That is the best of my recollection. Mr. E. A. Lobree, my brother-in-law, brought me down to your brother.

Q. What year was this?

A. Oh, I couldn't remember the year, sir; I couldn't remember the time.

Q. How long preceding?

A. It was before 1928. And I met this man—

Q. One moment. How long preceding?

A. Oh, I couldn't tell you.

Q. Was it one, two, three, four or five years?

A. I couldn't say, because I was going backwards and forwards from Australia. I have just got a recollection that your brother gave me a letter to that man, and I met this man through your brother.

Q. You mean you met him through that letter?

A. Your brother gave me a letter to a gentleman in New York, or some one in New York, and through the some one in New York I met this Mr. Stone. Now, you might have it in your files showing the man whom I met, and you could find that man Stone easier than I could.

Mr. Samuels: It would take about five years to go through everything in the office from what you tell me, and I am not going to undertake that task. Don't put that in the record—all right; let it go in.

Q. Now, he was prepared to deliver to you at that time notes in a certain amount and cash, is that correct? When I say "he", I mean this Mr. Stone.

A. They offered to buy from me, yes.

Q. They were prepared then and there to deliver notes to you and allow a certain amount of cash?

A. Yes.

Q. What was the amount of notes they were prepared to deliver to you?

A. I couldn't recollect now.

Q. You have no idea at all?

A. No, I couldn't tell you the amount discussed at that time.

Q. Could you tell me the amount of cash?

A. No.

Q. Have you any idea how much it was?

A. It is all hazy to me.

Q. Haven't you any idea of the amount of cash?

A. No, I couldn't recollect now.

Q. Would it be $1,000.00, would you say?

A. I would only be guessing.

Q. Well, I want to know. According to your best belief it could have been less or more, is that right?

A. I couldn't say.

Q. What price was offered you?

A. I can't recollect exactly, but I think it was around the same prices that we were selling to Europe for. It was ranging according to the best of my recollection from 90c to about $1.36 per ounce.

Q. And that was for your entire output, is that correct?

A. That was for the output of industrial sapphires.

Q. That is what I am referring to.

A. We are only discussing that at this time.

Q. And for any specific time?

A. I couldn't recollect now.

Q. You couldn't recollect?

A. It must have been, because they wouldn't have discussed it for a month or six weeks, you know.

Q. It would have been for an attractive period, is that right?

A. Yes.

Q. A long period of years?

A. It would have been.

Q. It would have been years and not months?

A. Yes, it would have been years and not months.

Q. You said that was in September, 1928, if I remember correctly, on your trip to New York?

A. Yes, sir, it was on that trip.

Q. You knew Mr. Calvin Smith, did you not, of Los Angeles, or Mr. Walter Calvin Smith?

A. Yes, sir.

Q. Did you communicate that to him?

A. Well, Mr. Smith came to New York with me on that trip, but he only stayed I think two days, and I was there two or three weeks.

Q. Was he present at this meeting with any of these gentlemen?

A. I don't think so, because we arrived one day, and I think he left the next.

Q. And you knew Mr. Jefferson Graves, did you not, at that time?

A. Yes, sir.

Q. As a matter of fact you had arranged then to meet Mr. Jefferson Graves abroad—in London or Paris?

A. Paris, I think it was, sir.

Q. Paris?

A. I am not sure, sir. It is hazy to me.

Q. We will say in Europe.

A. In Europe.

Q. Did you mention that to him?

A. I don't think I saw him in New York.

Q. Did you mention it to him afterwards when you saw him in Europe?

A. I couldn't recollect.

Q. You saw him in the following month in October in Europe, did you not?

A. Somewhere about that time.

Q. Did you mention that to him?

A. Well, I couldn't recollect now if I did, or not, sir. You know, that was a long time ago, and it is impossible for a man to recollect what he said to a man at that time, or it is for me.

Q. Aside from this man by the name of Stone—and you can't identify him any more accurately, can you?

A. No, sir.

Q. (Continuing:) —Did you have any other opportunity at or about this time to dispose of any quantity of the mechanical industrial rough sapphires?

A. Yes, I sold industrial sapphires in Germany.

Q. I am talking about the United States. Pardon me. I should have said that.

A. Well, I wasn't in the country.

Q. Well, then, you can answer and give your explanation.

A. I wasn't in the country. I wasn't trying to sell industrial sapphires in the United States. I didn't want to sell in the United States industrial sapphires.

Q. Your best field for industrial sapphires as you have stated then was the European market?

A. That is where they cut them.

Q. Is it not a fact that in New York your efforts at or about this time or shortly prior to it—when I say at or about this time, I am talking about 1928, or shortly prior to that time—to dispose of mechanical industrial rough sapphires to possible outlets in New York, or possible purchasers thereof in New York, came to naught because of the expense of cutting them in New York or domestically—I refer to the United States—and the fact that they could be cut so much cheaper in Switzerland or abroad?

A. Well, I wouldn't say that was exactly a fact, sir. There were lots of features or lots of things entering into that industry. The chief thing was the men who knew how to cut these gems, and they wouldn't allow apprentices to come and cut them with them at a reduced price of wages, and they were reluctant to teach American boys how to cut, and the majority of the cutters were foreigners, and they didn't want to teach the Americans how to cut, and that was the chief thing. There were many industrial houses that would have liked to have cut their own jewels in this country, and to have been independent of foreign help in 1928. There was a lot of foreign help here, but they couldn't get the experts to train the American boys how to do it.

Q. That was shortly before 1928 as well as shortly thereafter?

A. It is true right up to date, sir.

Q. I see.

A. Right now, for instance.

Q. I said the period before then, too?

A. Yes.

Q. And therefore the field in the United States for the sale of this type of material was highly restricted, isn't that correct?

A. Restricted to the channels which were cutting, yes, sir.

Q. Now, coming to the period in 1928 when you met Mr. Walter Calvin Smith, and the bankrupt, Mr. Leonard Woodruff, an agreement was entered into, or an arrangement was entered into between at least the three of you, was there not, for the formation of a corporation to be known as and which was named the Golden State Gem Company of Nevada?

A. That is all very hazy to me, sir, because it all happened within a couple or three weeks, and I left for Europe immediately.

Q. Well, certainly you recollect that a corporation by the name of Golden State Gem Company of Nevada was formed at that time?

A. That is right.

Q. Or immediately preceding, is that correct?

A. Yes, sir.

Q. You remember it was a Nevada corporation, do you not?

A. I think it was, but I can't remember exactly now, sir.

Q. And you recall, do you not, that certain stock of the Golden State Gem Company of Nevada—I refer to the common stock—was issued in your name, is that correct?

A. Well, I couldn't tell you for sure, sir. I signed my signature to a couple of pieces of paper, and they took copies of it, and they stamped it on the different shares, and stock was issued.

* * * * *

(Pending question read.)

Mr. Meyberg: You either recall it, or you don't?

A. I don't recall anything connected with it, sir.

Mr. Samuels: Q. I will show you what purport to be five certificates of the common stock of a corporation designated in such certificates as Golden State Gem Company of Nevada, the certificates being numbered 10 to 14 consecutively, each dated the 24th day of August, 1928, Nos. 10, 11, 13 and 14 for 1,000 shares of stock, and No. 12 for 3,000 shares of stock, with the name "Morrie Heiser" typed in the space for designation of the owner, with the name of Walter Calvin Smith in handwriting above the line for designation of president, and the name "Morris Heiser" in handwriting above the line, or on the line above the designation of secretary, and ask you to examine each certificate and tell me whether the signature "Morrie Heiser" on each is your signature?

You can see these, Mr. Meyberg.

(Certificates handed to Mr. Meyberg and thereafter to the witness.)

A. I am not sure, sir; yet it looks like it. I have no recollection of signing them.

Q. You have no recollection of signing them?

A. No, sir.

Q. I call your attention to the form of assignment on the back of each certificate where the space for the name of the assignee has been filled in in longhand with the name "Maudie James Loller" in each instance; in longhand the date in each instance in the space therefor has been inserted, August 25,

1928, in the line for the purported owner of the stock appearing on the reverse side in longhand in each instance is "Morrie Heiser," and in two instances, that of No. 14 and that of No. 12, appears in longhand on the blank line below the printed words "In presence of" the name "Mrs. Lillian Heiser." Will you examine the reverse side of each of these certificates, and tell me whether the writing "Morrie Heiser" is your signature, or not?

A. It looks like it sir, but I don't remember signing it.

Mr. Samuels: I didn't ask you that.

A. I beg your pardon.

Q. Is it your signature according to the best of your knowledge?

A. It looks like it.

Q. Can't you answer "Yes" or "No"?

A. No, I can't. It looks like my signature.

Q. You will not then identify it as your signature with certainty, is that right?

A. Yes, that is right, sir.

Mr. Samuels: Q. Now, referring to the purported signature of your wife: On the reverse side of the two certificates previously identified can you state whether or not in those two instances the signature is that of your wife?

(Certificates handed to the witness.)

A. No, I couldn't say for sure, sir.

Q. You will not identify her signature either?

A. No, sir.

Q. And you have no recollection of the five certificates of stock being in your possession at any time, is that correct?

A. I can't recollect now, sir. That was quite a few years ago.

Q. Have you any belief on the subject?

A. Not now. It has been quite a long time ago, and I have tried to forget all about those things. I have had other things to worry about in the last few years, and naturally I haven't thought of those kind of things for some time, and I have no recollection in connection with it.

Mr. Samuels: I am offering in evidence as "Objector's Exhibit No. 6," as one exhibit, the five certificates just presented to the witness.

Mr. Meyberg: Our regular objection goes to all these questions, and upon the additional ground that no foundation has been laid.

Mr. Samuels: When you say your regular objection, you mean your objection stipulated to, and going to all these questions?

Mr. Meyberg: Yes.

(Five certificates of Golden State Gem Company to Morris Heiser, Nos. 10 to 14, marked "Objector's Exhibit No. 6.")

Mr. Samuels: Q. You do not recall, then, finally delivering any one of the five certificates just brought to your attention to Mrs. Loller, or to her then husband, William Loller? Was that his name?

A. No, I can't recollect now, sir.

Q. Do you recall that certificates of stock of the corporation, Golden State Gem Company of Nevada, issued in your name in excess of the certificates brought to your attention were at any time delivered to you?

A. Not to my recollection, sir.

Q. Do you recall that you were at a meeting of directors of Golden State Gem Company of Nevada and were elected to the office of secretary?

A. I don't recollect that, sir.

Q. Do you recall any meeting of the directors or incorporators of this Nevada corporation?

A. No, sir.

Q. You don't recall any of them?

A. No.

Q. It is a fact, is it not, that the shipment of material from San Francisco to Los Angeles, which shipment has been the subject of testimony by you just above in this deposition, was lodged or stored in the United States National Bank of Los Angeles some time about August 13, 1928?

A. Yes, sir, to the best of my belief that is correct.

Q. Do you know in whose name it was stored?

A. No, sir, I couldn't remember now.

Q. Was it stored in the name of the Golden State Gem Company, a California corporation?

A. No, it would not have been.

Q. It wasn't?

A. I am pretty sure of that.

Q. Was it stored in the name of the Golden State Gem Company of Nevada?

A. No, it wouldn't have been.

Q. When I say "stored," I mean in conjunction with your name. I do not mean alone. I am going to modify those previous questions. Was it stored jointly with you and with either one of those companies I have mentioned?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No, sir.

Q. Was it stored in your name and in the name of Walter Calvin Smith?

A. Not to my knowledge.

Q. Well, the instructions with respect to the storage were given by you, were they not?

A. It is very hard to remember so far back, sir; I couldn't recollect.

Q. Do you remember anybody else who gave the instructions at that time?

A. No, I couldn't remember, sir. I wish I could.

Q. Were you present at the storing of the material in that bank at or about the time mentioned?

A. Yes, I was there at the time it was brought in, I am sure.

Q. Well, did you receive a storage receipt at that time?

A. Well, I had other goods there besides that, sir.

Q. Pardon me. Did you receive a storage receipt for that shipment at that time?

A. I might have, but I can't recollect now, sir.

Q. Did you not give the bank the name or names in which it should be stored?

A. I must have done so, but I can't recollect; I can't recollect having done so. That is going back a long way, sir.

Q. Do you recall my showing you these five certificates of stock when your deposition was taken in the case of Heiser vs. Graves, and taken at my office—I will give you the appropriate date so that you will know it—on the 27th day of October, 1932?

A. No, I can't remember that, sir. You showed me so many papers, and there was so much at that time, that I can't remember it.

Q. You can't remember. That is the answer.

A. No, sir, I can't remember.

Q. You have no recollection at all?

A. No, sir.

Q. Do you not recall at that time you identified the signatures on the five certificates mentioned above the word "Secretary" as your signature?

A. No, I don't recall it, sir.

Q. I am going to read you some questions and answers from the deposition I have last referred to, and so that you can follow it—they will be quite lengthy—I am going to allow you, if you will, or your client, to take this deposition, commencing on line 2, at page 131.

Will you follow me, Mr. Meyberg?

(Transcript handed to Mr. Meyberg.)

"Q. Look at this certificate of stock if you will kindly. You will see that it bears the witness mark on the back of that stock and immediately below the assignment clause, of your wife, is that correct?

"A. Yes, sir.

"Q. Is that her writing?

"A. I think so; I am nearly sure."

In the light of that testimony what will you say with respect to the signature of your wife on the certificate I have shown you?

A. Well, I am not sure now, sir.

Q. You are not sure now?

A. No.

Q. "Q. And further viewing the certificate, immediately below the assignment clause, that is your signature, is that correct?

"A. Yes, sir."

In the light of that testimony can you identify your signature?

A. No, I can't now, sir. It might have looked like it then, but today those "r's" don't look like my signature.

Q. "Q. And inserted in blank spaces are the words: 'I' and 'Maude James Loller;' is that correct?

"A. Yes, sir.

"Q. In whose handwriting are those words?

"A. I think that is mine."

Do you recall so testifying?

A. Yes, I might have thought it was my signature.

Q. Do you recall so testifying?

A. No, I don't recall it, sir.

Q. What is your belief now as to the insertion of the writing of the words "I" and "Maude James Loller," is that your handwriting?

(Witness examining certificates.)

A. I am not sure, sir.

Q. What is your best judgment in that regard?

A. I haven't a recollection on that.

Q. All right.

A. My judgment would be that the "J" doesn't look like my "J." I don't think I write a "J" like that.

Q. You do not think this is your signature?

A. I am not sure.

Q. You say you don't think you write like this?

A. I am not sure.

Q. "Q. You will also notice handwriting, '25 August 1928" on the date line; whose handwriting is that?

"A. I think that is mine also, sir."

Do you remember so testifying?

A. No, sir.

Mr. Meyberg: Where did you read that from?

Mr. Samuels: That is on page 131: "You will also notice

handwriting, '25 August 1928' on the date line; whose handwriting is that?'' That is lines 15 and 16 on page 131.

Mr. Meyberg: Oh, yes, that is right.

Mr. Samuels: Have I read it correctly?

"A. I think that is mine also, sir."

Mr. Meyberg: Yes.

Mr. Samuels: Q. What is your belief now as to whether or not the handwriting "25 August 1928" is yours?

A. I don't know that it is mine, sir.
Q. You don't know that it is?
A. No.
Q. Line 20: "Q. Were those insertions in the blank spaces which you have just referred to, 'I,' 'Maude James Loller' and the date '25 August 1928' made on the date appearing in the date line, '25 August 28'?

"A. I don't think so, sir, because a lot of those papers were prepared in Los Angeles while I was here, and they sent them down here for me to sign them, or from Los Angeles to San Francisco, and I am not positive of that."

Do you recall so testifying?

A. I don't recall so testifying, sir.
Q. Now, we are coming to line 1, on page 132:

"Q. Did you endorse any other certificates of this corporation at the same time in the same manner?
"A. Yes, sir."

Do you recall so testifying?

A. No, I don't recollect, sir.
Q. Is it a fact that you endorsed any other certificates?
A. I am not sure. I don't know what I did in 1928. I couldn't recollect.
Q. "Q. How many more?

"A. There were several others; I don't know exactly how many."

Do you remember so testifying?

A. No, I don't remember, sir.
Q. "Q. What is your best recollection?

"A. I remember giving them to Mr. Loller."

Do you recall so testifying?

A. No, I don't, sir.
Q. Did you give any of these certificates to Mr. Loller?
A. That I don't recollect.
Q. What?
A. I don't recollect now.
Q. "Q. When did you give them to Mr. Loller?

"A. I think it was the early part of September, I am not positive."

Do you remember that question and answer?

A. No, I don't, sir.
Q. Do you remember now whether or not you gave any certificates to Mr. Loller in the early part of September?
A. No, I am not positive.
Q. "Q. The early part of September?

"A. Yes, it was just before I left for Europe."

Does that refresh your recollection?

A. No, sir.
Q. Will you say whether or not you gave any certificates of this corporation to Mr. Loller?
A. I couldn't recollect.
Q. You can't answer "Yes" or "No"?
A. No, sir.
Q. "Q. It is a fact, is it not, that you gave him 5000 shares in five separate certificates?

"A. I couldn't tell you exactly how many."

You do not recall that?

A. No, sir, I can't remember that, there were so many questions asked me.
Q. "Q. What is your best recollection?

"A. I couldn't tell you how many I gave him offhand."

You don't recall that testimony?

A. No, sir.

* * * * * *

Mr. Samuels: Q. Calling your attention then to page 133, line 12:

"Q. Mr. Heiser, did you deliver these shares of stock to Mrs. Loller or Mr. Loller?"

The shares of stock constituted the certificates Nos. 10, 11, 12, 13 and 14—is that correct?

Mr. Meyberg: You say here "several." I don't know whether it makes any difference.

Mr. Samuels: Q. "Q. Mr. Heiser, did you deliver these shares of stock to Mrs. Loller or Mr. Loller?"

Referring to certificates 10 to 14, inclusive, presented to you; those are the certificates referred to in the question. And the answer is:

"A. To Mr. Loller."

Do you so recall?

A. No, I don't recall it now, sir.

Mr. Samuels: Let us go to question—

Mr. Meyberg: You can put in: "Was anybody present when you delivered them?"

Mr. Samuels: I will put the whole thing in. It makes no difference.

Q. "Q. Do you remember where you delivered them to him?

"A. I think it was in his office: I am not positive: I am nearly sure it was in his office on Market Street."

Do you remember so testifying?

A. No, I can't now, sir.

Q. And have you any recollection now of delivering any of these certificates to Mr. Loller at the place designated at his office on Market Street, or anywhere else?

A. That was so long ago.

Mr. Samuels: You can answer the question.

A. No, I don't recollect. I am sorry, sir.

Q. "Q. Was anybody present when you delivered them?

"A. No, I don't think there was."

Do you recall that testimony?

A. No, I don't, sir.

Q. "Q. What is your best recollection of the date of delivery?

"A. I think it was about the first of September, sir, the early part of September, I think."

Do you recall that?

A. No, I do not.

Q. Does that refresh your recollection in any way?

A. No, sir.

Q. "Q. Why did you insert the 25th day of August, 1928?

"A. Because they told me to do that immediately when I received them, and I think after they were issued in Los Angeles they were sent here and I got them next day."

And in longhand: "I received the shares several days prior to delivery."

Do you recall that testimony?

A. No, sir.

Q. Was it a fact that you received these shares?

A. I couldn't tell you, sir; I can't remember.

Q. "Q. Who were 'they'?

"A. I think it was Mr. Smith; I am not sure."

Do you recall that?

A. No, I do not.

Q. "Q. By letter?

"A. I think he telephoned to me to do it, because they did a lot of business by telephoning to me."

Do you recall that?

A. No, I don't recall it.

Q. "Q. These were executed in the presence of your wife; these two bear her signature?

"A. Yes, sir."

Do you recall that?

A. No, I don't, sir.

Q. Was it a fact that they were executed in the presence of your wife?

A. I have no recollection of it at all, sir.

Q. "Q. Were they transferred in the presence of your wife? Was the transfer clause filled out in the presence of your wife?

"A. Yes."

Do you recall that?

A. No, sir.

Q. You don't recall the testimony or the fact?

A. I don't recall anything about it at present, sir.

Q. Is it not a fact, Mr. Heiser, that this shipment of your material which was lodged or stored in the United States National Bank of Los Angeles was transferred by you to Golden State Gem Company of Nevada in consideration of the issuance of the shares of stock which has been the subject of your recent testimony and certain additional shares of stock in that corporation?

A. No, sir.

* * * * *

Q. I am going to refer you to page 15 of your testimony in the matter of Golden State Gem Company, bankrupt, in the District Court of the United States, Southern District of California, Central Division, before Honorable Earl E. Moss, Referee, and particularly the following questions and answers—I will start with the last question on page 15:

"The Referee: Now, did you have any written transactions—"

Mr. Meyberg: May the record show that the Referee to which you refer in this transcript is Earl E. Moss?

Mr. Samuels: Yes.

* * * * *

Q. "The Referee: Now, did you have any written transactions with Mr. Smith or Mr. Woodruff, in writing?"

This is on page 16:

"A. I couldn't say how many documents there were prepared I signed, but Mr. Smith kept one set and Mr. Barstow or Mr. Woodruff got the other. I didn't take them because I was on my way to Europe. I left for Europe just after that and I didn't know what happened until I got there and I was making an arrangement for the getting of the rough material for the Golden State Gem Company."

Do you recall that question and answer?

A. No, sir.

Q. Was your answer correct?

A. I haven't any recollection, sir, today.

Q. "Q. You signed a number of papers but you do not have copies of them?

"A. No. Mr. Smith was looking after that end, and Mr. Barstow had the rest on file."

Do you recall that question and answer?

A. No, I don't sir.

Q. With respect to your answer, have you any recollection of the facts, or not?

A. That is all so hazy to me; sir.

Q. Then you have no recollection, is that correct?

A. I have no recollection.

Q. "Q. Well, when you brought those stones up here you put them over in the United States National Bank. Was the box under joint control or individual control of any of you three gentlemen?

"A. Each *ones* had access to it, and it was in the name of the Golden State Gem Company."

Do you recall that?

A. No, sir.

Q. You don't recall that?

A. No.

Q. Is it a fact that the box referred to—whatever it may have been—was in the name of the Golden State Gem Company at that time?

A. Not to my recollection.

Q. Was it a fact that anybody else besides yourself had access to that stored material?

A. Not to my recollection.

Q. "Q. And it was individually controlled for yourself, Woodruff or Smith?

"A. Yes. They were supposed to be my property until they were turned over to the Nevada Company. The only thing I was to receive for my stock of gems was shares in the Nevada Company but there was nothing ever passed to the Nevada Company, your Worship. They kept everything to themselves and they gave me paper in a worthless company that never functioned."

Do you recall that testimony?

A. No, sir.

Q. You do not recall that?

A. No, sir.

Q. Is it a fact, then, that the only thing you would receive for your stock of gems were shares in the Nevada Company?

A. I don't recollect that, sir.

Q. You don't recollect that?

A. No, sir.

Q. Was it your ground of complaint that while you received the shares of stock they were valueless because what you understood the company was to do was not done?

Mr. Meyberg: Just a minute. That is objected to on the further ground that the complaint is the best evidence.

Mr. Samuels: Answer the question.

A. I have no recollection on that at all, sir.

Q. You have no recollection at all on that?

A. No, sir.

Q. Now, I show you what purports to be a photostatic copy of a check drawn against the United States National Bank, dated September 21, 1928, No. 23, payable to the order of M. E. Heiser or Morrie Heiser, in the sum of $350.00, signed, "Golden State Gem Co. of Nev. Walter Calvin Smith," opposite the word "President"; "Morrie Heiser" opposite the word "Secretary", and ask you if you have ever seen the original of that check?

(Document handed to Mr. Meyberg and thereafter to the witness.)

A. I am trying to identify this, but it is very difficult. On September the 21st, 1928, I think I was on board a ship, sir, on my way to London. I left here on the 5th day of September, and I was in New York about two weeks. I am not sure. It is very, very hazy. It is hard for me to say; it is impossible.

Q. Is that a facsimile of your signature appearing there, "Morrie Heiser"?

A. I am not sure. There is the name of "Heiser" written on top, and there is the name of "Heiser" written again underneath.

Q. Surely you know your signature, Mr. Heiser, do you not?

A. I am not sure whether that is my signature, or not.

Q. Can't you say whether that appears to be a true photostatic copy of your signature, or a photostatic copy of your actual signature?

A. The only thing I can identify is this: I have a hazy recollection that Smith was in New York with me and short of money, and he asked me—

Mr. Samuels: I didn't ask you anything about that. I asked you to identify your signature if you can.

A. I can't identify it in any other way. That is the only way I can identify it; that is the only way. I am sorry.

Q. And referring to the reverse side, and apparently there purports to be a photostatic copy of your signature "Morrie Heiser," and below that "E. A. Lobree." Will you look at those signatures. Can you identify that as your signature, "Morrie Heiser"?

A. It looks like mine, but I am not positive, sir.

Q. Do you know your brother-in-law's signature?

A. I haven't seen it very much for a long time.

Q. Can you identify that as his signature?

A. I wouldn't identify his signature, no, sir; I wouldn't like to identify it.

Mr. Samuels: We will offer this photostatic copy of

check just presented to the witness, and ask that it be marked as Objector's exhibit next in order.

Mr. Meyberg: To which our same objection goes.

Mr. Samuels: Yes.

Mr. Meyberg: And no foundation laid, and not the best evidence.

(Check No. 33, dated Sept. 21, 1928, to M. E. Heiser from Golden State Gem Co., marked "Objector's Exhibit No. 7.")

Mr. Samuels: Q. Did you not introduce Mr. Walter Calvin Smith to the United States National Bank of Los Angeles?

A. Not to my recollection.

Q. Not to your recollection. What is your best belief on the subject, if you have any?

Mr. Meyberg: What was the question?

(Record read.)

A. No, I haven't any recollection on that at all.

Mr. Samuels: Q. Were you a customer of the United States National Bank—

Mr. Meyberg: When?

Mr. Samuels: I am going to ask him.

Mr. Meyberg: Just a minute. I will get the date if you don't mind. On and prior to the month of August, 1928.

A. I haven't any recollection on it, but I think I was a customer there; I haven't any recollection on it at all.

Q. Did you have a bank account there?

A. I couldn't tell you, sir.

Q. Were you doing business at or about that time under the fictitious name of Australian American Gem Mining Company?

A. Yes, I think I was.

Q. That was your individual business, was it?

A. That is right, sir.

Q. Now, calling your attention to what purports to be a photostatic copy of a deposit receipt of the United States National Bank, dated July 9, 1928, naming as the depositor

the Australian American Gem Mining Co., and showing the deposit of three items totaling $3,205.00, I will ask you if that deposit receipt, or the original of that photostatic copy ever came to your attention?

(Photostat handed to witness.)

Mr. Samuels: Show it to Mr. Meyberg. Do you want to see it, Mr. Meyberg?

(Photostat handed to Mr. Meyberg.)

A. No, I don't recollect ever having seen that before, sir.

Q. Do you recollect having deposited any moneys at or about that time in the name of the Australian American Gem Mining Co.?

A. No, I can't recollect that, sir. I have been trying to see if I could identify the numbers on that, but I can't recollect it.

Q. You can't recollect that?

A. No, sir.

Q. Do you recall whether or not you opened a new account with the bank at or about that time?

A. No, I couldn't remember that, sir. That was a long time ago.

Q. Do you remember having in your possession or receiving checks at or about that time in the amount of $750.00 and $2,075.00?

A. No, it is impossible to remember.

Q. Could the check for $2,075.00 according to your best recollection have been delivered to you by Mr. Woodruff or Mr. Smith?

A. It could have been, but I do not remember it, sir.

Q. You know of no transaction which carried that payment to you at or about that time?

A. I couldn't remember, sir. It is possible.

Mr. Samuels: I offer this photostatic copy of the United States National Bank deposit slip as objector's exhibit next in order.

Mr. Meyberg: In addition to the regular objection, Mr. Reporter, I make the further objection that no foundation has been laid.

(Deposit slip dated July 9, 1928, Australian American

Gem Mining Co., for $3,205.00, marked "Objector's Exhibit No. 8.")

Mr. Samuels: Q. Have you the original deposit slip of this deposit?

A. Not to my knowledge, sir.

Q. I mean setting forth the items here?

A. I don't remember ever having seen that before, sir.

Mr. Samuels: All right.

Mr. Meyberg: Is it your contention, Mr. Samuels, that he would have the original of that deposit slip?

Mr. Samuels: No, he wouldn't have it. He may have a duplicate of it.

Q. Have you a duplicate of the deposit slip?

Mr. Meyberg: Is it your contention that he would have the deposit slip? Under the normal course of banking procedure wouldn't the bank have it?

Mr. Samuels: I asked him if he had a duplicate.

Q. Have you a duplicate of that deposit slip?

Mr. Meyberg: He could have that, if they didn't put it in his bank book. He might not even have a duplicate. You generally make out one of these, and deposit it with the bank.

Mr. Samuels: Q. Have you a bank-book showing your deposits with the United States National Bank in the month of July, 1928, whether in your individual name or in the name of the Australian American Gem Mining Co.?

A. No, sir.

Mr. Meyberg: You might find it if you look for it?

A. What is that?

Mr. Meyberg: You might find it if you look for it?

Mr. Samuels: He said he hasn't got it.

A. I don't think I have it.

Mr. Samuels: You can ask him that afterwards.

Mr. Meyberg: All right. Go ahead.

Mr. Samuels: Q. Do you remember whether or not you authorized your brother-in-law, E. A. Lobree, to draw upon a bank account standing in the name of the Australian American Gem Mining Co. with the United States National Bank?

A. That is just possible.

Q. Do you have any recollection of it?

A. No, I haven't any recollection, but it is possible because he had a power of attorney to act for me.

Mr. Meyberg: Just a minute. He didn't ask you that.

A. I am awfully sorry.

Mr. Samuels: Q. What is your best recollection on the subject?

A. I haven't any recollection that I gave it, sir.

Mr. Meyberg: That is all he asked you.

A. I beg your pardon. I am awfully sorry.

Mr. Samuels: Q. I show you what purports to be a photostatic copy of a signature authorization card of the United States National Bank of Los Angeles. Below the "Name of Firm or Individual" appears "Australian American Gem Mining Co."; on the line "Authorized Signature" appears "E. A. Lobree", with the address, "8021 Geary St., S. F. Cal. Telephone Evergreen 5735. Date 7/21 28 Business Mfg." And ask you whether you ever saw the original of which that purports to be a photostatic copy?

(Photostat handed to Mr. Meyberg and thereafter to the witness.)

A. No, I can't say.

Q. You never saw the original so far as you know?

A. I can't remember. I might have done so, sir.

Q. But you have no recollection?

A. I have no recollection on it, no, sir.

Q. Can you state whether or not what purports to be a photostatic copy of the signature of E. A. Lobree conforms to or is the signature of E. A. Lobree?

A. That I wouldn't like to say.
Q. You wouldn't like to say?
A. No.
Q. What can you say about it?
A. I wouldn't like to say. I haven't any definite recollection of E. A. Lobree's signature today.
Q. Have you ever seen his signature?
A. Oh, yes, I have.
Q. Have you seen it innumerable times?
A. Not recently.
Q. I didn't ask you that. Have you seen it innumerable times?
A. I won't say that. I have seen it several times.
Q. You have seen it only several times?
A. I have seen it quite a lot.
Q. When was the last time you saw it?
A. I couldn't recollect now.
Q. Was it within the last five years?
A. I wouldn't like to say. I can't recollect when I saw E. A. Lobree's signature on a piece of paper. We have had no business together, and I have had no cause to see his signature, and he doesn't write to me.

Mr. Samuels: Shall we adjourn until this afternoon?

Mr. Meyberg: Yes.

Mr. Samuels: Suppose we make the appointed time a quarter past 2:00 this afternoon?

Mr. Meyberg: All right.

Mr. Samuels: I offer this in evidence as objector's next exhibit in order.

Mr. Meyberg: With our regular objection, and on the further ground no foundation has been laid.

(Signature authorization card of United States National Bank of Los Angeles, dated July 21, 1928, marked "Objector's Exhibit No. 9.")

(Thereupon an adjournment was taken until 2:15 o'clock P. M., Thursday, August 28th, 1941, and by consent of counsel to be resumed at the same place.)

Room 1700, 333 Montgomery Street, San Francisco, California, Thursday, August 28th, 1941, 2:15 P. M.

* * * * *

Examination by Mr. Samuels (Resumed).

Mr. Samuels: Will you read the last part of the record, Mr. Reporter?

(Record read as requested)

A. There were one or two things you asked me on cross-examination, and I have refreshed my recollection during the lunch hour.

Mr. Samuels: Proceed.

A. We did sell quite a number of sapphires—

Q. Whom do you mean by "we"?

A. I sold quite a bit of industrial sapphires to that man Janchower, in New York, and he was the expert for this Precious Gem or Precious Stone Corporation in New York. He was the expert buyer—that is what you would call it—he was the expert buyer for them.

Q. When you say "quite a bit", how much do you refer to?

A. I mean quite a lot, sir. I think there was one amount of three to five thousand which took place.

Q. Three to five thousand what?

A. Dollars; and the second amount ran to about $15,000.00.

Q. Do you think so? Do you know?

A. According to the best of my recollection.

Q. Have you any evidence of it in the way of book accounts or any other documentary evidence?

A. No, I haven't, Mr. Samuels. I have been trying to find it today.

Q. If you can find it will you produce it?

A. Yes, sir.

Q. When was the sale made first?

A. I couldn't tell you.

Q. When was the sale made of $15,000.00 to Mr. Janchower? Was that his name?

A. Janchower.

Q. When was that sale made to Janchower? Was it made to Janchower himself or to this Gem Company?

A. Now, I am not positive whether it was made to the Gem Company or to Mr. Janchower, or to Mr. Janchower for the Gem Company. It is hazy for me to remember that, you see.

Q. When was it made?

A. It was made in 1928 on my way to London. I was only in New York about two weeks or thereabouts.

Q. You tell me when it was made. I didn't ask you any more than that.

A. I beg your pardon, sir.

Mr. Meyberg: That is right.

Mr. Samuels: Q. Is the gentleman still alive, do you know?

A. I don't know. I haven't been in touch with him for a long time.

Q. You didn't seek to sell him any more?

A. I went to London.

Q. I didn't ask you that. You didn't seek to sell him any more?

A. I haven't been in the country.

Q. Haven't you been in the country since 1928?

A. Yes.

Q. You were gone for two years on that trip, weren't you, commencing in September or October, 1928?

A. Two or three years; I am not positive of that.

Q. And how long have you been in the country since? And by the "country" we refer to the United States of America.

A. About three years this time. I have been several times in Canada, though.

Q. Isn't it a fact that you had Mr. Lobree ship from San Francisco approximately two tons of mechanical industrial rough sapphires for sale in New York some one or two or three years prior to 1928, and that you endeavored to sell the same there without success?

A. Prior to 1928?

Q. Yes.

A. Well, two or three years prior to 1928, sir. I think

I was in Australia. I came back from Australia I think in April or May, of 1928.

Q. Where were you in 1923?

A. I think I was in Australia. I am not sure, sir.

Q. Were you not in New York in 1923?

A. I am not positive, sir. I wouldn't like to say for sure.

Q. Were you in New York in the years 1922, 1923, or 1924, or any one of those years?

A. I don't think so. I am not positive. I couldn't say with certainty, sir; but in 1924 I think I was in Australia, and I think in 1922 I was in Australia, and in 1927 I think I was in Australia. I was backwards and forwards so much.

Q. How about 1923?

A. I think I was in Australia. I am not positive, though. I wouldn't like to say for sure, sir. It is terrible to remember those things.

Mr. Meyberg: That is enough.

Mr. Samuels: Q. Do you recall having Mr. Lobree, your brother-in-law, at your instance ship you approximately two tons of mechanical industrial rough sapphires to New York?

A. He might have done that, sir.

Q. Do you recall it, I asked you?

A. No, sir.

Q. You have no recollection on that subject at all?

A. No, sir.

Q. Do you recall storing approximately that amount of material mentioned by me in the Lincoln vaults in New York?

A. I don't remember actually storing it there myself. It was there, but I do not remember the conditions.

Q. Who stored it there?

A. I don't remember, sir.

Q. It was your material, wasn't it?

A. Yes, sir.

Q. Don't you remember who stored it there?

A. No, sir, I couldn't tell you offhand.

Q. You remember that amount of material was stored there, is that correct?

A. Yes. Other times there have been more than that.

Q. You remember that amount was stored there?

A. Yes.

Q. During what period of time was it stored there, can you say?

A. I couldn't tell you exactly.

Q. Was it as early as 1923?

A. I couldn't say right offhand, sir. I couldn't remember the date like that.

Q. When material of that character was in New York did you not offer to sell the same to Mr. Janchower?

A. I sold some to Mr. Janchower.

Q. I said while that material was there did you not offer to sell it to him?

A. It is possible. I—

Q. Did you offer to sell it to him? Just answer "Yes" or "No."

A. I sold him stuff, so I must have offered it to him.

Q. Did he not refuse to buy any portion of it?

A. No, sir, not to me.

Q. Did he not refuse upon the express ground that the cost of cutting that material was too expensive for him to handle it?

A. He never made that statement to me. He purchased from me on two or three different occasions, and then wanted to buy my output.

Q. He wanted to buy your output?

A. He and his crowd—the company that he represented.

Q. But you wouldn't sell it to him for the reasons you have mentioned already?

A. That is right, sir, because—

Q. Just a moment. You wouldn't sell it to him for the reasons you have mentioned already?

A. That is right, sir.

Q. Do you recall shipping to San Francisco in the year 1928 from New York, and from the Lincoln vaults, any quantity of mechanical industrial rough sapphires?

A. No.

Mr. Meyberg: To whom—to any one?

Mr. Samuels: I said shippnig it from New York to San Francisco.

Mr. Meyberg: I didn't get the San Francisco part of your question.

Mr. Samuels: I don't care who it was.

Mr. Meyberg: Read that question.

(Pending question read.)

A. No, I have no recollection of that at all, sir.

Mr. Samuels: Q. Now, it is a fact, is it not, that the advent of custom jewelry impaired the market for your gems domestically?

A. In my opinion I think it made a certain amount of difference, but it is very hard to say. It is only a matter of opinion. Some of the jewelers say it helped it make the people conscious of wearing jewelry.

Q. In your judgment and from your experience as a producer and vendor of the gems we have been discussing—I don't limit it simply to industrial—the gems you have been handling, and produced by your mines, do you think the advent of custom jewelry in 1926 impaired the United States market for your product?

A. For cheap imitation jewelry, but not for genuine gems, I wouldn't think so, sir. I am a stone man, and I deal in rough stones, and I do not deal with finished gems. My opinion wouldn't be worth much because I do not understand much about mounting jewelry.

Q. I am referring to page 272 of the record of testimony on revaluation in action No. 7256-C-Law, and call your attention to the following questions and answers commencing on line 5 of said page:

"Q. Are you familiar with what is termed today as costume jewelry?

"A. Yes."

• • • • •

Mr. Samuels: Q. Do you remember that question being put to you on that occasion, and giving that answer?

A. No, I can't quite recollect that question at all.

Q. You don't recollect it at all?

A. No, sir.

Q. Do you remember the answer "Yes"?

A. No, I do not.

Q. "Q. What has been the effect of that?

"A. That is what ruined the business."

Do you recall that question and answer?

A. No, I don't recall it, sir.

Q. You don't recall that at all?

A. No, sir.

Q. Was your answer true "That is what ruined the business"?

A. Yes, sir, in my opinion that is the thing that upset the business.

Q. That is what ruined it?

A. Yes, sir.

Q. "Q. When did that start?

"A. That started in 1926, in New York, and it spread right across the country. Shore & Company were the first people to start it in New York, and they opened about 20 or 30 stores, and the Hiller people started, and they introduced it to the department stores, and the ladies caught onto it."

Do you remember that question and answer?

A. No, I can't remember that question or answer.

Q. Is that answer correct?

A. Yes, sir.

Q. That answer is correct?

A. Yes, sir.

Q. "Q. That depressed the market on all kinds of semi-precious stones?

"A. Yes."

Do you remember that question and answer?

A. Yes, sir.

Q. Do you remember that?

A. Yes, sir.

Q. You remember that question and answer, do you?

A. I have a slight recollection of it?

Q. You have only a slight recollection of it?

A. Yes.

Q. Was that answer true?

A. Yes.

Q. You left New York for Paris or London—was it London, Mr. Heiser, first?

A. I am really sure it was London. I think I landed in London first.

Q. One moment. Let me get it. "I think some time in September or October, of 1928." Is that correct?

A. Yes, sir, I think that is correct.

Q. Do you remember when you reached London?

A. No, I couldn't say for sure. I don't know whether I stopped off at Southampton for a few days, or not; I couldn't say exactly no.

Q. You had arranged, had you not, to meet in London, a Mr. Jefferson Graves?

A. I have a recollection that I had an appointment, yes, sir.

Q. Only a recollection?

A. Yes, sir. That was a long time ago, you know, and there has been a lot of mixup on this thing since then. I can't remember half of the things that have taken place.

Q. And Mr. Graves was to bring with him to London, was he not, certain gentlemen from Paris whom he represented as experts and outlets of sale of your product, isn't that correct?

* * * * *

A. I wouldn't say it is correct, sir, because I haven't any recollection on it. It is a detail that happened twelve or fourteen years ago.

Mr. Samuels: Q. You haven't any recollection of it?

A. No, sir.

Mr. Samuels: Never mind the details of twelve or fifteen years ago. Just answer the questions.

A. I beg your pardon. I have no recollection of it.

Q. You had some of your materials stored in London, did you not, at that time—in the year 1928, and in the month of October?

A. It is just possible I had, but I can't recollect details on that, sir.

Q. You do not recollect whether you had, or not?

A. No, I couldn't say whether I had, or not. I wouldn't like to say now whether I had, or not.

Q. And do you not recall meeting at the place of storage of your material in London Mr. Jefferson Graves, a Mr. LeQuintree, Mr. Bietrix, and Mr. Poncet?

A. I met so many people in London it would be impossible for me to separate those men out, sir.

Q. Had you heard of Mr. Bietrix before?

A. The name seems familiar to me, but I cannot place it.

Q. Had you heard of Mr. LeQuintree before October, 1928?

A. I think I had, but it is very, very vague to me, sir, and I wouldn't like to make a statement that I know the man. If I had something to refresh my memory, I might know more about it, but I can't remember.

Q. Where did you store your material in London? I am asking you about around the year 1928. Where did you store your material then?

A. In 1928 if I remember correctly there was very little stuff in London. We had sold it all, but I am not positive of that, sir. I think we were very, very short of material in London.

Mr. Meyberg: By "we," you mean whom?

A. Myself. It was shipped to London, and immediately shipped straight out to Germany; and I think when I was in London I was very short of material. It was selling quite readily.

Mr. Samuels: I asked you where you stored it, and I got a very prolific answer, and I will ask that all of the answer be stricken as non-responsive to the question.

Q. I asked you where you stored your material in London, if you stored any at all there in the year 1928?

A. In one of the bank vaults, but I can't remember the exact place.

* * * * * *

Mr. Samuels: Q. We will take, if you will, the copy of the transcript of testimony adduced before the Deputy Commissioner of Corporations of the State of California, in the matter of the investigation and examination of International

Gems. Incidentally, do you know whether or not the permit sought for the sale of stock in that matter was granted, or whether the application was withdrawn?

A. I am not positive about that. I haven't any recollection of it. I know we had decided not to go on with it, if I remember correctly, and it is just possible that we may have withdrawn it.

Q. You decided not to go on with it during the progress of the hearing, is that correct?

A. No, it wasn't that. I forgot exactly what it was, now, but there was something which cropped up from the other side, and we decided not to go on with it.

Q. Who are "we"?

A. Myself. I beg your pardon. I decided and the other people with me.

Q. Was that before the application was filed and the hearing had on the application, or afterwards?

A. Around that period. Just as the application went in, I think. The application went in a week too soon, or we wouldn't have gone on with it. I couldn't tell you the details on it. That was quite a few years ago, you know, and there have been so many things asked me about that.

* * * * *

Q. Can you answer definitely according to any recollection you have whether your determination not to go on with the proceeding was during the progress of the hearing had before the Deputy Commissioner or subsequent to the completion of that hearing, or prior to the hearing?

A. I couldn't tell you, sir.

* * * * *

Q. "Q. Do you know a Mr. Albert Lequentric?

"A. Yes sir, one of the shareholders of Mr. Graves company, or one of his directors, in Paris."

Do you remember that question and answer?

A. No, I don't remember the question or answer.

Q. Does that refresh your recollection that you knew Mr. LeQuintrec?

A. No, sir.

Q. It does not?
A. No, sir.

* * * * *

Q. You were shown by the Referee, or by your attorney, one or the other, an affidavit—here it is—an affidavit of one A. LeQuintrec. This is what purports to be a photostatic copy of it. And then Mr. Goldman asked you the question:

"Q. Will you state what is the truth in respect to those matters?"

Referring to the contents of the affidavit.

A. Well, I explained pretty well all that previously when I said I went to Paris with those gems.

Q. "Q. If you will limit yourself to the particular portions of that transaction which you had with Mr. Lequentric —the conversations at which Mr. Lequintree was present, I think that will cover it.

"A. Well, Mr. Lequentric was present on two or three occasions in Paris. They sold, I think that was the gentleman that sold one of those stones, twelve hundred dollars, so that alone shows you that I did have stones of value."

Do you recall those questions and answers?

A. Mr. Samuels, there have been so many questions—

Q. Do you recall those questions and answers? Just answer "Yes" or "No."

A. There were so many questions, and so much jumble on this, that I can't recall those questions.

Mr. Samuels: I ask that go out as not responsive to the question.

Q. I asked you whether you recalled those questions and answers.

A. No, I do not.

Q. You have no recollection of them at all?

A. No, sir.

Q. Do you recall whether or not Mr. LeQuintree purchased a stone from you, or purchased stones from you, and sold one of them for $1200.00?

A. No, I haven't any recollection of that.

Q. You haven't any recollection on that at all?

A. No, I can't remember that.

Q. Have you any recollection that he sold any stones for you at all, or bought any from you on that visit to Paris in 1928?

A. I can't recollect now, sir.

Q. You can't recollect now?

A. There has been so much that I have been doing since then.

Mr. Samuels: "You can't recollect"—that is your answer.

Q. "Q. About how large a stone was that?

"A. I am not quite sure now.

"Q. A sapphire?

"A. Sapphires. They sold sapphires and opals.

"Q. But one of the stones he sold for twelve hundred dollars?

"A. Twelve hundred dollars; the company, that was their company, firm, association, was formed years before I ever met this gentleman. And, relating to the contract, Mr. Graves was here and he met Mr. Barstow, the man who formed the company."

Do you recall any of that testimony?

A. No, sir. It is all jumbled up to me.

Q. Then you have no recollection, have you, of any meeting in London at which your wife was present, Mrs. Lillian Heiser, in a vault of a bank there where you had some of your uncut stones deposited or stored, and at which meeting Mr. Jefferson Graves was present, and the other individuals whom I have named were present—you have no recollection of that at all?

A. No, I can't recall it, sir.

Q. You can't recall such a meeting where any one of those gentlemen were present, is that right?

A. Yes.

Q. Graves or LeQuintrec or Bietrix or Poncet?

A. I met so many people over that period of time—

Q. You have no recollection of that?

A. No, sir.

Q. You don't remember whether you showed them any

of your stones, and that at that time they all stated the stones were of such poor quality and so small that they couldn't use them?

A. I can't recollect, sir, on that.

Q. You can't recollect it. You don't know that you were told at that time by them that they had evidently been cut—that some one had worked upon them and cut the stones? You don't recall that?

A. No, sir.

Q. You don't recall that you then admitted to them that your stones were what was left over after the more desirable stones had been sold or removed from them?

A. No, I don't remember those incidents that you are speaking of.

Q. Do you remember that you then told them that you expected to have some samples from your Australian mines arrive in London, and that you would visit them in Paris and display those samples which you stated would be of superior quality?

A. I don't recollect that, sir.

Q. You don't recollect that at all?

A. No, sir.

Q. Do you recall meeting in Paris Mr. Graves—and I refer now to the months of October or November, of 1928—Mr. Graves or Mr. LeQuintree or Mr. Bietrix, and displaying certain packets of stones which you said arrived in London and had just come from your Australian mines?

A. No.

* * * * *

A. I answered that I can't place that meeting which you are referring to.

Mr. Samuels: Q. You can't place that?

A. No, sir. It was so many years ago.

Q. Coming to page 175, line 7:

"Q. Did you have a large parcel of sapphires in the Bank of Australia in London at that time?

"A. Yes, sir."

Do you recall that testimony?

A. No, sir.

Q. That is the time of your trip to London in 1928.
A. Yes, sir.
Q. "Q. Approximately what value?

"A. About 12,000 pounds, $60,000."

Do you remember that testimony?

A. No, I do not remember that.
Q. "Q. Did you meet Mr. Lequentric in London with Mr. Graves?"

They didn't wait for a minute.

"Q. Did you show him some sapphires and opals there?
"A. Yes."

Does that refresh your recollection?

A. No, sir, it does not.
Q. It does not?
A. No, sir.
Q. All right. Now, then, I show you what purports to be a photostatic copy of a letter dated the 18th of October, 1928, addressed to Mr. Calvin Smith and Mr. Barstow, at Los Angeles, and purporting to carry your signature at its conclusion. Will you look at it, please?

(Photostat handed to the witness and thereafter to Mr. Meyberg.)

Mr. Samuels: In the meantime will you look at this, kindly, Mr. Meyberg.

(Another document handed to Mr. Meyberg.)

Mr. Meyberg: Do you want him to look at this?

Mr. Samuels: Yes.

(Last document handed to Mr. Meyberg handed to witness.)

Mr. Samuels: Q. Look at the signature on the last page, and will you say whether or not that appears to be a true copy of your signature?

A. No, I couldn't say whether that is a true copy of my signature, or not.

Q. What is your best belief on the subject?

A. I don't believe it is.

Q. Look at the letter and answer whether or not you wrote it?

A. It might be. This is dated 1929, and it could be my signature, but I wouldn't like to swear to it.

Mr. Meyberg: He isn't asking you, Mr. Heiser, whether you remember signing it. He asked you whether it looks like your signature.

A. It looks like my signature, yes.

Mr. Samuels: Q. Can you identify your signature?

A. No.

Mr. Meyberg: Supposing you read the letter.

Mr. Samuels: I asked him about his signature. Pardon me.

Q. Can you identify that as your signature?

A. It looks like my signature.

Q. Can you identify that as your signature? That permits of an answer "Yes" or "No."

A. Well, it looks like my signature, yet I am reluctant to say.

Q. Then you can answer "Yes" or "No."

A. It could be my signature.

Q. I asked you whether you could identify it. Not what it could be.

A. It looks very much like my signature.

Q. Will you identify that as your signature?

Mr. Meyberg: Are you willing to swear whether that is your signature, or not, Mr. Heiser? That is what he is asking you.

A. I wouldn't like to swear that it was, and I wouldn't like to swear that it wasn't. I am in doubt about it.

Mr. Samuels: That is all I am trying to get.

Q. Will you look at the letter and state whether or not that appears to be a true copy of a letter which you transmitted to the addressees mentioned at the top of the first page?

Mr. Meyberg: You can now read the letter, Mr. Hei

Mr. Samuels: That is all right.

(Witness examined letter.)

A. The subject matter of that letter is very much like as if it was coming from me, sir.

Mr. Samuels: I didn't ask you that.

A. I beg your pardon.

Q. Can you state whether or not you sent a letter to the addressees of which that is a true photostatic copy?

A. No, I couldn't tell you if I did.

Q. Can you state whether or not you sent a letter to the addressees containing the substance of what appears in that photostatic copy?

A. I couldn't remember it now, sir, no.

Q. And you can't identify the photostatic copy as being a letter which you sent to the addressees, is that correct?

A. No, I can't identify it. It might be my signature, and might not be my signature. I couldn't say for sure.

Q. I am talking about the letter—not the signature.

A. The letter I can't say.

Q. You wouldn't state that you wrote a letter to that effect to the addressees?

A. No, I haven't any recollection at all of this letter, sir.

Q. Does this opening paragraph: "I arrived in London and the buyers were there to meet me rearing to go (as our friend Rogers would say)! Unfortunately my registered parcels were not there on time, and there was a mix up with some of the Queensland stuff. Luckily I had my samples from America with me, which saved the day." Does that recall to your recollection the meeting with anybody in London to see your Queensland stuff?

A. That was twelve to fourteen years ago.

Mr. Samuels: I didn't ask you that.

A. I can't remember.

Q. All I asked you was if it recalled to your recollection a meeting with anybody in London to see your Queensland stuff?

A. No, I can't recollect it.

Q. It doesn't?

A. No.

Q. And it doesn't recall to your recollection the meeting in London at or about that time with any persons whom you referred to as the buyers?

A. No, sir.

Q. I think you stated that this was a type of a letter that you would write, is that correct?

A. No, I didn't say that.

Q. What was your language?

A. I said I might have written it.

Q. What makes you say that?

A. I think I might have written it—I might, and I might not.

Q. What portion of that letter gave you the belief that it was the style of letter which you might have written?

A. Well, I couldn't say, sir. It is all so hazy. There have been so many letters and so many depositions, and reading from so many different depositions and photostats I couldn't say. How could you expect me to identify an article like that?

Mr. Samuels: I didn't ask you to identify it. I ask that go out.

A. Or to remember it, even.

Mr. Samuels: I ask that all go out as non-responsive.

A. How could a man remember—

Mr. Samuels: I ask that all of your answer, except "I couldn't say, sir," be stricken as non-responsive, and self-serving and argumentative, and I will ask you to listen to the question, kindly, Mr. Heiser.

A. I beg your pardon.

Mr. Samuels: And if you will, you will not respond in that manner.

Mr. Reporter, will you give me the answer where he said, "It is the kind of a letter which he might have written," just after he examined it. I want to use the language of the witness, so that I will not be in error as to his language.

(Record read as follows:

"A. The subject matter of that letter is very much like—as if it was coming from me, sir.")

Q. Now, then, what made you state after reading this letter, that it was "very much like as if it was coming from me"?

A. I couldn't remember now, sir.

Q. Is there any portion of that letter which you have read which would indicate it is the form or type or contents of a letter which would have come from you?

A. No. The only thing I could remember, it mentions the Queensland Government.

Q. Just because it mentioned the Queensland Government?

A. Yes, sir.

Q. Otherwise no?

A. Yes, sir.

Q. There is a reference here in the letter, and I am reading it to you again—rather, I am reading page 2:

"I was in hopes of having a cable from you to say that you had sent at least £1,000 to Australia long before this."

Did you at that time expect to have £1000 sent to you from Australia?

Mr. Jacobs: Sent to Australia.

A. I can't recollect, sir.

Q. You can't recollect that?

A. No, sir.

Q. "Has Mr. Rogers sold any stock?" Who is Mr. Rogers?

A. I can't recollect, sir.

Q. You don't know?

A. No.

Q. That referred, did it not, to the stock of the Nevada corporation?

A. I have not the slightest idea.

Mr. Samuels: I offer this letter in evidence as objector's exhibit next in order, whatever it may be.

Mr. Meyberg: Objected to on the regular grounds, which includes no foundation laid and hearsay.

(Letter dated October 18th, 1928, to Mr. Calvin Smith and Mr. Barstow from Morrie Heiser, marked "Objector's Exhibit No. 10.")

Mr. Samuels: Q. Have you a recollection of seeing an affidavit of which this is a photostatic copy at the hearing of the application by the Division of Corporations of the International Gems?

(Document handed to Mr. Meyberg and thereafter to the witness.)

Mr. Meyberg: Are you prepared to state, Mr. Samuels, that this is a photostatic copy of what you say?

Mr. Samuels: I asked him that.

Mr. Meyberg: Or that it purports to be?

Mr. Samuels What did I say? Read that.

(Pending question read.)

Mr. Samuels: Of which this purports to be a photostatic copy.

Mr. Meyberg: If you know it is, I will take your word.

Mr. Samuels: No, I accept the amendment.

A. I don't recollect, sir.

Q. You don't recollect it?

A. No, sir.

Q. I show you a letter dated the 11th of October, 1929, and at the top it has "Strand Palace Hotel, London, W. C. 2. Attention International Trading Company, Paris. Dear Jeff and Mr. Lequantrie," and bearing at the end the signature "M. E. Heiser," and ask you after the presentation to your counsel whether it bears your signature, or more accurately I will ask you whether the signature is in your handwriting, and whether you can identify your handwriting?

(Document handed to Mr. Meyberg and thereafter to the witness.)

A. I wouldn't like to say that this is my signature, sir.

Mr. Samuels: I didn't ask you whether you would like to say, or not.

Q. Can you or can you not identify that as your signature?

A. No, I can't.

Q. You cannot?

A. No.

Mr. Meyberg: Does the signature look like yours?

A. That "s" doesn't look like mine, in the middle of the signature.

Mr. Samuels: Q. Does the signature as a whole look like your signature?

A. No, sir.

Q. Do you remember writing to Mrs. Graves that letter?

A. Mrs. Graves?

Q. Pardon me. Do you remember writing to International Trading Company, Paris, and the individual addressees, "Dear Jeff & Mr. Lequantrie"—

Mr. Meyberg: Answer the question.

Mr. Samuels: He is just waiting for me to complete the question.

Q. Do you remember addressing them at or about that date?

A. No, sir. I have no recollection of this at all.

Mr. Meyberg: What is the date?

A. "11th October, 1929."

Mr. Samuels: It is in the record.

Q. Did you at that time on October 11th, 1929, "have some of the most prominent British people interested and they have under their option in British Guiana 140 miles concession to build a railway and two miles of country each side with all gold and diamond rights and timber"?

A. If I said I had I did.

Mr. Samuels: I didn't ask you that. I didn't ask you what you said you had.

* * * * *

Q. Have your any recollection on the subject?

A. No, sir.

Q. Have you any recollection of inquiring of International Trading Company, and/or Jeff, Mr. LeQuintree, Mr. Bietrix, or Mr. Walker, if they were interested in this—referring to the particular matter I have just referred to?

A. No, I can't recollect now, sir.

Q. Are the words "Mr. Beatrix" in your handwriting, appearing on page 1, and being an insertion?

A. I don't know. I don't think so.

Q. You don't think so?

A. No.

Q. Will you say you did not write that letter, then?

A. I have no recollection of that letter.

Q. Will you say you did not write that letter?

A. And I won't say I did either.

Mr. Samuels: I didn't ask you that.

Mr. Meyberg: You can say whether you did or did not. Your answer is you won't say whether you did or did not?

A. That is right.

Mr. Samuels: That is sufficient. We will offer this letter in evidence as objector's exhibit in due order.

* * * * * *

(Letter dated 11th October, 1929, to "Dear Jeff & Mr. Lequantrie," from M. E. Heiser, marked "Objector's Exhibit No. 11.")

Mr. Samuels: Q. Did you ever leave with Mr. LeQuintree a coal report?

A. I can't recollect now, sir, whether I did, or not.

Q. Were you stopping on the 11th of October, 1929, at the Strand Palace Hotel, in London?

A. I am not sure, sir.

Q. What is your best recollection?

A. I haven't any recollection on it; I wouldn't be able to remember that. It would be very difficult.

* * * * * *

Q. Now, I show you a letter dated November 14, 1928,

addressed "My dear Maudie & Will," and signed "Morrie Heiser," and after submitting it to your counsel I will inquire whether or not you can identify the signature appearing at the bottom of that letter as yours?

(Document handed to Mr. Meyberg and thereafter to the witness.)

A. No, I can't identify that, sir.

Q. Will you say it is not your signature?

A. It doesn't look like my signature, yet it might be. I wouldn't say "Yes" and I wouldn't say "No"—there have been so many signatures, and so many papers shown me.

Mr. Samuels: Please answer the question. The other is going to be stricken out.

A. All right, sir.

Mr. Samuels: I know what your explanation is, and I am leaving that to the Court as Mr. Meyberg is.

Q. Now, do you recall writing a letter of this type to Mrs. Graves?

A. No, I do not, sir.

Q. Or her husband?

A. I do not, sir.

Q. Will you say after examining that letter that you did not write it to them?

A. I have no recollection of this letter, sir.

Mr. Samuels: I did not ask you that.

Q. I said looking at its contents will you say it did not proceed from you?

A. I wouldn't be able to say now after all these years.

Q. It may, and it may not, is that your answer?

A. I wouldn't like to say, sir, after all these years.

Q. Does this refresh your recollection, that Mr. Beatrix sold one parcel of seconds (30 ounces) for 35,000 francs?

A. No, sir.

Q. Did you have at or about November 14th, 1928, 25,000 ounces of cheap industrial sapphires in New York?

A. In 1928?

Q. Yes.

A. I couldn't tell you, sir. I had a large amount. I must have had. In 1928?

Q. Yes.

A. Oh, I should say I had about—oh, I would say about over a ton.

Q. I am asking you whether you had 25,000 ounces of cheap industrial sapphires in New York? If you had that many, or more, then you had that many.

A. I can't recollect for sure.

Q. You can't answer that?

A. No, sir.

Q. Do you recall at any time offering them to either Mrs. Maud Loller or her husband, Will Loller, or Jeff, for the formation of a corporation?

A. I haven't the slightest idea.

Q. You haven't the slightest idea?

A. No, sir.

Q. You have no recollection at all?

A. No, sir.

Q. Did you know that Mrs. Maud Loller—referred to in this letter as "Maudie"—was going to the hospital for treatment of any kind?

A. I can't recollect, sir.

Q. You do not recall that at all?

A. No, sir.

Q. Did you know a Mrs. Benjamin?

A. Well, I might have known twenty Mrs. Benjamins.

Q. Did you at that time know a Mrs. Benjamin? If you knew twenty, you knew one.

A. I can't recollect.

Q. You can't recollect?

A. Not at this time, no, sir.

Q. Do you recall any advice received by you from a Mrs. Benjamin—

A. No.

Mr. Samuels: I haven't finished the question.

A. I beg your pardon. I am awfully sorry.

Mr. Samuels: That is all right.

Q. (Continuing:) —that Mrs. Maudie Loller was going to the hospital?

A. No, I don't recollect, sir.
Q. Did you give a large light opal to Jamie?
A. Jamie who?
Q. I don't know. There is a reference there to "Jamie."
A. No, I don't know who that is.
Q. Did you know Jamie Graves?
A. I might have, but I don't recollect it.
Q. Do you recollect her?
A. What?
Q. Do you recollect her?
A. No, sir.
Q. Do you recollect having given to Mr. Beatrix an opal to carve the figure of a person by the name of Jamie in it in the ballon dance—or balloon dance—whichever it may be?
A. I don't know, sir.
Q. You don't recall?
A. It is all Greek to me.
Q. It is all Greek to you?
A. Yes.
Q. You don't know that Mr. Walker's daughter Jamie was a dancer?
A. I haven't any recollection of it. She might have been.
Q. I didn't ask you that. I asked you if you knew that Mr. Walker's daughter Jamie was a dancer?
A. That was in 1929, you know.
Q. I know that. Did you, or didn't you know it?
A. I can't recollect it, sir.
Q. You can't recollect it?
A. No, sir.

Mr. Samuels: All right. We will offer this letter in evidence as "Objector's Exhibit 12," the letter of November 14, 1928.

Mr. Meyberg: The same objection on this, Mr. Hart.

(Letter dated Nov. 14, 1928, to "My dear Maudie & Will," from Morrie Heiser, marked "Objector's Exhibit No. 12.")

Mr. Samuels: Q. Referring now again to the photostatic copy which is in evidence, and which purports to be a letter dated the 18th of October, 1928, addressed to Mr. Calvin Smith and Mr. Barstow, and which purports to bear your signature, or which bears the signature of "Morrie Heiser"—

Mr. Meyberg: You mean which you have offered?

Mr. Samuels: Which I have offered in evidence.

Mr. Meyberg: Yes..

Mr. Samuels: It is in evidence.

Mr. Meyberg: It has only been offered. You mean which you have offered, but it isn't in evidence yet.

Mr. Samuels: Yes, it is. What is the number of this exhibit?

Mr. Meyberg: You mean it has been offered.

Mr. Samuels: It has been introduced in evidence so far as this deposition is concerned; whether it will be accepted in court is another thing. Is that what you mean to say?

Mr. Meyberg: That is what I meant.

Mr. Samuels: It is in evidence so far as we are concerned. All of it is in evidence for the purpose of the deposition.

Q. I call your attention particularly to the following language on page 2:

"In this mail I am sending to the Golden State Gem Company the two thousand shares of the ordinary stock of the Heiser Burmah Sapphire Ltd."

Do you recall at any time writing to either Mr. Smith or Mr. Barstow to that effect?

A. No, sir, I can't recall that.

Q. Did you at any time send to the Golden State Gem Company 2,000 shares of the ordinary stock of the Heiser Burmah Sapphire, Ltd.?

A. No, sir.

Q. You do not?

A. I can't remember it.

Q. Oh, you can't remember it?

A. No, sir.

Q. Is the Heiser Burmah Sapphire, Ltd., in liquidation?

A. I am not sure, sir.

Q. You are not sure whether that is in liquidation, or not?

A. No, sir, not at present.

Q. Did you know a Mr. Henry Gillies, purporting to be Registrar of Companies in Brisbane, State of Queensland?

A. No, sir, I can't remember the name.

Q. What?

A. I can't remember the name.

Q. Do you know that registration has to take place of the capitalization of a company, or as you have referred to it of a syndicate, formed under the laws of Australia, in the office of the Registrar at Brisbane, if it was a Brisbane company—did you know that?

A. No, I don't know anything about registration of company matters. I am not a company man.

Q. Do you know that in registering the company has to set forth the list of persons holding shares in the company?

A. No, I didn't know that, sir.

Q. You do not know that?

A. No, sir.

Q. You do not know whether that list was registered then, do you?

A. No, sir.

Q. Were these companies called joint stock companies in Australia?

A. I couldn't tell you now, sir.

Q. You don't know that?

A. No.

Q. Did you own of the shares of stock of that company, Heiser Burmah Sapphire, Ltd., 8,239 shares?

A. It is just possible, but I couldn't say right offhand now, sir.

Q. What is your best judgment?

A. I haven't any recollection on it now, sir.

Q. Have you any recollection at all of the number of shares you owned?

A. No, sir.

Q. Do you know whether you owned more than 100?

A. I couldn't recollect now, sir.

Q. You couldn't say whether at any time during the life of that company you owned more than 100 shares of its common stock, is that right?

A. I couldn't say, no.

Q. You couldn't say?

A. I couldn't say exactly how many I had.

Q. Did you know a Mr. Colin C. Corrie?

A. The name is familiar, but I can't place it.

Q. You can't place him?

A. No.

Q. Do you know whether he was a stockholder of that company?

A. It is possible—no, I couldn't tell you.

Q. You couldn't answer that?

A. I left the country just as the company was formed, and what took place after I left I couldn't say, sir.

Q. You were never back there after that?

A. I have been back there I think twice, but I went to the fields; I didn't go into the city.

Q. You did not meet Mr. Corrie after that, then?

A. Not to my recollection.

Q. Not to your recollection?

A. No.

Q. And did you know whether he was an officer of that company?

A. That I couldn't tell you now, sir.

Q. Could you tell me who the secretary of that company was?

A. No, sir. What is it—fifteen or sixteen years ago you are asking me about?

Q. No. I am asking you as late as—one moment and I will get it—the corporation was only formed in 1929, apparently.

Mr. Samuels: Q. Referring now to either the year 1928 or 1929 did you know who the secretary of the corporation was?

A. No, sir.

Q. Or of the company, rather?

A. No, sir. I was not in the country in 1929. I was in Europe.

Q. And you did not know who the secretary of that company was at any time thereafter?

A. No, I wouldn't remember that, sir.

Q. You wouldn't remember that?

A. No.

Q. Well, haven't you heard whether or not the company is in liquidation?

A. No, I have no recollection of having heard, sir.

Q. So far as you know, the company is a going concern, is that right?

A. I have no recollection on it. I haven't heard, sir.

Q. I am talking about the present time. So far as you know the company is a going concern, is that right?

A. I have no recollection.

Q. You have no recollection at the present time?

A. Yes, that is right.

Q. Have any of the products of the mines owned by that company been delivered to you within the last five years?

A. No, they have not.

Q. They have not?

A. No, sir.

Q. How about the preceding period—within a year before then?

A. I can't recollect, sir. It goes back too far.

Q. When can you recollect last having received the products from the mines of that company?

A. It was shipped to London.

Q. I didn't ask you that. When can you recollect last having received the products from the mines of that company?

A. I can't recollect when, sir.

Q. You can't recollect when?

A. No.

Q. You can't say whether it was in 1928, 1929, or 1930?

A. No, sir.

Q. Is that right?

A. Yes, sir, that is right.

Q. You do not know whether in the year 1928 that company was in liquidation, do you?

A. Yes, the company was shipping in 1928; I am sure it was shipping in 1928.

Q. Was it shipping in 1929?

A. I think so.

Q. Are you sure of that?

A. I am nearly sure, sir. That is a long time to remember.

Q. I am asking you for the best of your recollection. At

that time it was shipping according to the best of your recollection, is that right, in 1929?

A. Yes, sir, in 1929 it was shipping.

Q. What can you say with respect to the year 1930?

A. I am not sure.

Q. You are not sure?

A. No; it is so hazy.

Q. Did you have an address at any time at Parbury House, Brisbane?

A. Did I personally?

Q. Yes.

A. I can't recollect having that address, sir.

Q. Did any of your companies have an address at that place?

A. It is possible, but I haven't any recollection on it now, sir.

Q. Do you know an American and Australian Gem Mining Syndicate, of Brisbane?

A. Of Brisbane?

Q. With the address Brisbane?

A. I can't recollect it now, sir.

Q. Did you do business under any fictitious name containing the name "Syndicate"?

A. It is just possible.

Q. Don't you recall?

A. I don't recall it now, sir. That is fifteen or sixteen years ago you are talking of there.

Q. Do you at the present time use any fictitious name in your operations—

A. No, sir.

Q. One moment.

A. I beg your pardon.

Q. When did you last use a fictitious name in any of your operations?

A. Oh, it was quite a long time ago, sir. I haven't been doing much business in that line recently.

Q. I show you a typewritten letter which purports to bear the signature "M. E. Heiser," and which purports to have the date of October 9th, 1929, and addressed to one L. LeQuentrix, International Trading Company, Paris, and ask you whether the signature "M. E. Heiser" is your signature?

Do you want to look at it, Mr. Meyberg?

(Document handed to Mr. Meyberg and thereafter to the witness.)

A. It doesn't look like it. There is entirely another name there.

Mr. Samuels: I didn't ask you that.

Mr. Meyberg: Can you swear that is your signature?

A. No, sir.

Mr. Meyberg: That is what he asked you.

A. No, sir.

Mr. Samuels: Q. What is your best recollection and belief on the subject?

A. I don't believe it is my signature.

Q. Now, then, looking at this letter, can you say whether or not a letter of that substance or character was addressed by you to the addressee?

Mr. Meyberg: Now, he is asking you to read it, Mr. Heiser.

Mr. Samuels: That is right.

A. No, I don't recollect, sir.

Q. You don't recollect?

A. No.

Q. Will you say it was not written by you?

A. I would rather say it was not written by me than that it was.

Q. I will grant that, but for what reason?

A. Because I do not believe it is my letter.

Q. Did you ever see the original of a signature card of the United States National Bank of Los Angeles of the character which I am now showing you. This purports to be a photostatic copy. Show it to your counsel, if you will.

(Photostat handed to the witness and thereafter to Mr. Meyberg.)

Mr. Samuels: This letter of October 9th, 1929, is offered

in evidence as objector's exhibit next in order; and this letter of October 9th, 1929, is subject to your objections to the same extent, Mr. Meyberg. You want your same objections, and also that there is no foundation, is that correct?

Mr. Meyberg: Yes. I think "no foundation" was in my original objection anyhow.

(Letter dated 9th October 1929 to M. LeQuentrix from M. E. Heiser, marked "Objector's Exhibit No. 13.")

A. What was the question on this?

Mr. Samuels: Read the question to the gentleman.

(Pending question read.)

A. I don't remember having seen the original of that photostat, sir.

Q. Looking at this photostatic copy, or what purports to be a photostatic copy of a signature card signed by Golden State Gem Co., and signed "Walter Calvin Smith, Business Address, 726-28 San Pedro St., Tel. ME-0318"—is that "ME"?

Mr. Meyberg: "ME," I guess.

Mr. Samuels: "ME-0318: Introduced by Mr. Heiser (Australian-Am. Min. Co.), date Aug-16/28," having read that to you, does that refresh your recollection in any manner whatsoever?

A. No, sir.

Q. Have you any recollection of introducing Mr. Smith or the Golden State Gem Co.—

A. No, sir.

Q. (Continuing:) —to the United States National Bank?

A. No, sir, I have no recollection of it at all.

Mr. Samuels: All right. We will offer this card in evidence—

A. And the reverse side? Did you see Mr. Walter Calvin Smith sign an original of which this purports to be a photostatic copy?

A. Not to my recollection, sir.

Q. You were not present at the time?

A. I have no recollection of it at all.

Mr. Samuels: We will offer this as objector's exhibit next in order.

Mr. Meyberg: Did you ask him whether that was his signature?

Mr. Samuels: No, it is "Introduced by Mr. Heiser." I will not say that that is his signature.

Mr. Meyberg: Oh, all right.

Mr. Samuels: I don't know whether that is his signature, or not.

Mr. Meyberg: I don't either.

Mr. Samuels: I ask that it be marked objector's exhibit next in order.

Mr. Meyberg: Don't forget my objection, Mr. Reporter.

(Photostatic copy of signature card of Walter Calvin Smith dated August 16, 1928, marked "Objector's Exhibit No. 14.")

Mr. Samuels: Q. Do you remember the opening of the account by the Golden State Gem Company of Nevada on August 16, 1928, with the United States National Bank?

A. No, sir.

Q. You do not?

A. No, sir, I do not remember that.

Q. You were not present, were you, at the time of the opening of any account of that type?

A. Not to my knowledge, sir.

Q. Do you know of the deposit with that bank in such an account on or about August 16, 1928, of $9,223.00?

A. No.

Q. Or any sum whatsoever?

A. No, I haven't any recollection of it.

Q. You haven't any recollection of it?

A. No, sir.

Q. I will show you the photostatic copy first. Both of you may look at it. It just supplements the other.

(Photostat of deposit tag handed to Mr. Meyberg and thereafter to the witness.)

Q. The subject matter of that photostatic copy is wholly unknown to you?

A. That is correct.

Q. And you have no recollection of any of those items on that photostatic copy of the deposit tag?

A. No, sir.

Q. Or of any other features of that deposit tag?

A. No, sir, I can't recollect it.

Q. And you were not present in the bank—

A. Not that I can recall.

Mr. Samuels: Pardon me. I have not finished.

Q. You were not present in the United States National Bank at any time with Mr. Walter Calvin Smith when such an account was opened, or when a deposit was made to such an account?

A. I cannot recollect having been there, sir.

Q. To the best of your knowledge what do you say?

A. I can't remember.

Q. You can't remember?

A. No.

Mr. Samuels: I offer that next in order,

Mr. Meyberg: And the same objection.

(Deposit tag of Golden State Gem Co., dated August 16, 1928, marked "Objector's Exhibit No. 15.")

A. While you were talking about Queensland there—

Mr. Samuels: One moment.

A. There was something that came back to my mind, and I had a paper, Mr. Samuels—

Mr. Samuels: Don't put this in the record until we find out what it is.

A. I would like it to go into the record.

Mr. Samuels: I want to find out what it is first.

(Off the record.)

Mr. Meyberg: I think this should be in the record. Mr. Heiser, did you say you had some explanation which you wanted to make with reference to some answer you have given in your deposition—do I understand that correctly?

A. Yes, sir, that is what it is.

Mr. Meyberg: In this deposition here?

A. Yes, sir.

* * * * * *

Mr. Samuels: With respect to what matter do you want to make an explanation?

A. With respect to my representing the Queensland Government at the Panama-Pacific Exposition. I was sent over here by the Queensland Government to represent them at the Panama-Pacific Exposition to cut gems, and to sell them, and to make a general demonstration. The Government at first was going to pay my passage, and all my materials, but on account of the war conditions they did not feel they wanted to pay my fare.

Mr. Samuels: One moment. We ask "on account of the war conditions—"

A. On account of shortage of money.

Mr. Samuels: "On account of shortage of money" we ask be stricken as hearsay.

A. On account of conditions they didn't want to pay my fare.

Mr. Samuels: I ask that be stricken as a conclusion of the witness.

A. And they agreed to pay for all my merchandise—

Mr. Samuels: Pay what?

A. Pay for the merchandise to be transferred from Australia to America, and bring it into the country, and provide me with space in the Exposition, and space to cut my gems, space to demonstrate the gems, power, and access to and from the grounds with my help. I had several men cutting there, and I was also demonstrating there.

Mr. Samuels: One moment. "I had several men cutting there," I ask be stricken.

Mr. Meyberg: Let him make his explanation, and then you can move to strike it out.

Mr. Samuels: That is not an explanation of your authority. Just a moment. You have given that before, and it is in the record.

A. While I was cutting, and had men working for me, I was called on many occasions to tell the people who came along different conditions that prevailed in the Australian fields—the sapphire and opal fields.

Mr. Samuels: We object to that as not in any wise relating to any question, and not in any wise an indication of authority or representation.

A. All right.

Mr. Samuels: One moment. And purely hearsay, self-serving, and the conclusion of the witness.

A. Well, whilst I was cutting there and demonstrating—

Mr. Samuels: Move to strike it out upon those grounds.

A. While I was cutting there, and while I was demonstrating there, I always considered myself as a man—

Mr. Samuels: I ask that be stricken as a conclusion of the witness.

A. Well, I had—

Mr. Samuels: And self-serving as to what he considered himself.

A. I beg your pardon.

Mr. Samuels: Anything further you have to say on the subject?

A. Yes, sir. I considered I was representing the Government because I was the only man from the State of Queensland cutting gems and demonstrating them, because all the other exhibits were in bond, and my gems were out of bond, and I had a permit to sell them.

Mr. Samuels: One moment. I ask that all be stricken — "I considered myself this and that," and what follows, upon the ground it is purely the conclusion of the witness, it is self-serving and argumentative; it is not responsive to any question which has heretofore been asked the witness in connection with his representation, or his asserted representation of the Queensland Government, or any portion of Australia, or the Government of Australia, or any state therein.

A. And I had a letter from the Government officials in Australia and Queensland—

Mr. Samuels: One moment. We object on the ground the letter is the best evidence.

A. I am trying to find the letter, and if I can locate it I will turn it over to Mr. Samuels. The letter was—

Mr. Samuels: One moment. We don't want the contents of the letter. We object to that upon the ground the witness said he was trying to find the letter, and if so he will turn it over to Mr. Samuels, and until that is done the contents of this letter are inadmissible.

A. Well, on account of that letter I considered myself representing the Government, although not in an official capacity.

Mr. Samuels: One moment. I object to that—

A. And I—

Mr. Samuels: One moment. I move that be stricken out on the ground it is but the conclusion of the witness. The unknown substance of a particular letter, and his determination and his consideration of whether he was a representative of the Government on account of the letter is inadmissible.

Is that all?

Mr. Meyberg: Is that all?

Mr. Samuels: I mean the explanation.

A. Yes.

* * * * *

Mr. Meyberg: This deposition is closed.

* * * * *

M. E. HEISER,
(Seal) By HELEN FLANAGAN,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires January 24, 1945.

State of California, Northern District of California, City and County of San Francisco, ss.

I hereby certify that on the 26th, 27th and 28th days of August, 1941, before me, Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, at the office of Oscar Samuels, Esquire, Room 1700, 333 Montgomery Street, San Francisco, California, personally appeared pursuant to Notice of Intention to Take Deposition, hereto annexed, M. E. Heiser, a witness called on behalf of the debtor, Leonard J. Woodruff, herein; and T. W. Champion, Esquire, and Louis A. Fischl, Esquire, represented by Oscar Samuels, Esquire, and Teyis Jacobs, Esquire, appeared as attorneys for the said debtor, Leonard J. Woodruff; and Leonard J. Meyberg, Esquire, appeared as attorney for M. E. Heiser; and the said M. E. Heiser being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by his deposition hereto annexed.

And I further certify that the said deposition was then and there recorded stenographically by Frank L. Hart, a competent official and disinterested shorthand reporter, appointed by me for that purpose and acting under my direction and personal supervision, and was transcribed by him, and that the deposition is a true record of the testimony given by the witness.

I further certify that when the testimony was fully transcribed, the deposition was submitted to the witness, M. E. Heiser, for examination, was read to or by him, and was signed by said witness.

And I further certify that the said deposition has been retained by me for the purpose of securely sealing it in an envelope and directing the same to the Clerk of the Court as required by law.

And I further certify that the exhibits hereto attached and marked "Objector's Exhibits Nos. 1 to 15," inclusive, are the exhibits referred to and used in connection with the deposition of said witness.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

In Testimony Whereof, I have hereunto set my hand and official seal at the City and County of San Francisco, State of California, this 16th day of October, A. D. 1941.

HELEN V. FLANAGAN, Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

My Commission Expires January 24, 1945.

Statement of Notary Accompanying the Signature by Her of Within Deposition.

I, Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, appointed by the United States District Court in and for the Eastern District of Oklahoma in the matter of the Bankruptcy of Leonard J. Woodruff, bankrupt, No. 7623, bankruptcy, to preside, and who presided, at the taking of the within deposition, do hereby certify that the transcription of the within deposition of the witness M. E. Heiser was completed and in the possession of the undersigned and available to said witness for examination by the 3rd day of September, 1941; that at all of the times herein referred to said witness resided, and resides, at #506—47th Avenue, San Francisco, California, and at all of said times had, and has, a telephone, designated Bayview 8319, installed in his said home; that between the 3rd day of September, 1941, and the 10th day of September, 1941, frequent telephone inquiries to the home of said witness evoked the response

that the witness was absent from the City and that the time of his return was unknown; that said inquiries were for the purpose of ascertaining when said witness would examine his deposition to make such changes in form or substance that he might desire and to thereafter sign the same; that on the 10th day of September, 1941, Oscar Samuels, attorney at law, of San Francisco, California, who represented Messrs. Champion and Fischl in the taking of said depositions, mailed to Leonard J. Meyberg, Esq., attorney at law, of Los Angeles, California, who represented said witness on the taking of his deposition, a letter, a true copy of which is attached hereto; that in response thereto said Oscar Samuels received a letter dated September 15, 1941, from said Meyberg, which is also attached hereto; that under date of September 16, 1941, said Samuels replied to said last mentioned letter of said Meyberg, a true copy of which reply is attached hereto; that the undersigned is informed by said Samuels, and states it to be a fact, that he received no reply to said last mentioned letter and has heard nothing further from him; that under date of September 20, 1941, the undersigned, by registered mail, sent a letter to said Meyberg and to said Heiser, a true copy of which is attached hereto; that the return registration receipts for said letter are also attached hereto; that the reply dated September 23, 1941, of said Meyberg is attached hereto; that it appears from said last referred to letter that said witness was to have been in Los Angeles before the end of the week in which said letter was written; that in response to said last mentioned letter the undersigned, under date of September 25, 1941, wrote to said Meyberg, a true copy of which response is attached hereto; that the undersigned has heard nothing further from said Meyberg, notwithstanding that under date of October 7, 1941, the undersigned addressed and mailed a letter to said Meyberg, a true copy of which is attached hereto; that the undersigned has this day telephoned to the said home of the said witness and was advised by the person answering the telephone, identifying herself as the wife of said witness, that he was not in San Francisco, that his time of return was uncertain and unknown to her, that he had been in Los Angeles some several weeks ago and that she did not know whether he was there presently; that the undersigned believes that said Heiser is deliber-

ately evading signing said deposition and that further effort on her part to accomplish the same will be futile, and that the undersigned, as the authorized officer presiding at said deposition, has signed said deposition because of the absence of said witness from the City and County of San Francisco and for his refusal to sign the same.

HELEN V. FLANAGAN, Notary Public in and for the City and County of San Francisco appointed to preside at the taking of the deposition of said witness.

My Commission Expires January 24, 1945.

September 10, 1941

Leonard J. Meyberg, Esq.
Attorney at Law
Lane Mortgage Building Los Angeles, California

Re: Leonard J. Woodruff, a bankrupt

My dear Mr. Meyberg: As you doubtless know through the receipt of a copy thereof, the deposition of M. E. Heiser in the above matter has been transcribed and has been ready for the last several days for submission to him for examination changes, if any he may desire to make and for subscription. Inquiry at his home has evoked the response that he is in the East and that the time of his return is unknown. Under Rule 30, subsection (e) of the Federal Rules of Civil Procedure it would appear that the Notary may, in light of the foregoing, dispense with such submission to, and subscription by, the witness.

My purpose in writing to you is, before advising the Notary on this feature, to ascertain whether you have communicated with Mr. Heiser regarding his examination of, and signature to, his deposition or, if not, whether you can inform me of his reasonably certain time of return to this City or whether you are content that his deposition should be returned to Court in its present form, unsubscribed by him.

May I hear from you with the least loss of time.

Very truly yours,

OS:CH OSCAR SAMUELS

Law Offices

Leonard J. Meyberg

Fourth Floor Lane Mortgage Building
Eighth and Spring Streets Los Angeles

September 15, 1941

Mr. Oscar Samuels, 333 Montgomery Street, San Francisco, California.

Sir: We have not as yet received a copy of the deposition of Mr. M. E. Heiser, though, as arranged with Mr. Hart, we remitted to him in full upon receipt of his bill. Why it is not forthcoming we do not know.

We have received word from Mr. Heiser that he is on one of his usual business trips, which he expects to bring him into Los Angeles in the next few days. If you will direct that the transcript containing his deposition be sent to me we will arrange to have it signed by Mr. Heiser before a notary here; or if we find it cannot be within a reasonable time we will endeavor to arrange to have it returned to you with a stipulation that it may be used without his signature.

Having in mind that Mr. Heiser was interrupted so many times in giving his answers, and that the matter about which you interrogated him ran back for the most part between twenty and twenty-five years ago, I would think it would be more appropriate, in order to have the records speak the fact, to have it examined by Mr. Heiser.

Respectfully yours,

LJM:S LEONARD J. MEYBERG S.

September 16, 1941

Leonard J. Meyberg, Esq., Attorney at Law, Lane Mortgage Building, Eighth and Spring Streets, Los Angeles, California.

Dear Sir: I am just in receipt of yours of the 15th instant relative to the subscription by Mr. Heiser of his deposition.

I have telephoned to Mr. Hart and have been informed by him that your copy of the deposition is available to you, if not already received by you. If that be true, it would appear to me that it would be the more practicable course for Mr. Heiser, who you state will be in your City within a few days following the time of your writing, to examine it, determine upon the changes, if any, he desires to make, list those changes for his own convenience and then to come to this City and have the changes and the reasons therefor noted upon the original by the officer appointed to preside at the taking of the deposition. If there be no changes, of course, a stipulation may be entered into that subscription may be foregone. I am apprehensive of the legal effect of deviating from the provisions of the Statute and, in particular, to the extent of having Mr. Heiser sign before a Notary whose jurisdiction does not extend to the place of taking the deposition and who is other than the Court appointee.

Kindly advise me whether your copy of the deposition is not now in your possession or immediately procurable by you from the postoffice and whether the foregoing suggestion meets with your approval.

Very truly yours,

OS:CH OSCAR SAMUELS

Helen V. Flanagan
Notary Public
333 Montgomery Street San Francisco, Calif.

September 20, 1941

Mr. M. E. Heiser, 506—47th Avenue, San Francisco, California.

Dear Sir: Kindly be advised that unless you communi-

cate with the undersigned, at her office, Room 1800, 333 Montgomery Street, San Francisco, California, by Thursday, the 25th instant, with respect to the examination of your deposition taken in the matter of the bankruptcy of Leonard J. Woodruff, bankrupt, which matter is pending in the United States District Court in and for the Eastern District of Oklahoma, to permit of your making such changes therein as you may determine upon and to thereafter subscribe the same, or advise the undersigned of your intention at a specified time to appear at the undersigned's said office for said purpose, the undersigned, as the officer appointed by said Court to preside at the taking of said deposition, will sign said deposition and transmit the same to the Clerk of said Court for filing in said matter.

Very truly yours,

HELEN V. FLANAGAN, Notary Public appointed by said Court to preside at the taking of said deposition.

Registered Mail

cc: Leonard J. Meyberg, Lane Mortgage Bldg., Los Angeles, Calif.

Law Offices

Leonard J. Meyberg

Fourth Floor Lane Mortgage Building
Eighth and Spring Streets Los Angeles

September 23, 1941

Miss Helen *Flannagan*, Room 1800, 333 Montgomery Street, San Francisco, California.

Dear Madam: In response to a copy of your letter addressed to Mr. Heiser under date of September 20, asking that Mr. Heiser communicate with you by Thursday, September 25, with respect to the examination of his deposition taken in the matter of Leonard Woodruff, bankrupt, etc., be advised that Mr. Heiser, as we informed Mr. Samuels, is on one of his regular sales trips and has been expected in Los Angeles for several days. I understand that he will be here before the end of this week.

I wrote to Mr. Samuels suggesting that he send the original deposition here so that we could have Mr. Heiser go over it upon his arrival, and we could stipulate for its signing here before a notary, or we could have him take it back to San Francisco at his earliest convenience with notations of his corrections, if any, and arrange a time with you for its signing, etc.

Inasmuch as this deposition involved some 350 pages, more or less, and took several days, all day, with considerable argument engaged in by Mr. Samuels with the witness, which no doubt materially affected the stenographic report, it would seem to me that the witness should be afforded every opportunity to make a full and complete examination of the transcript to the end that it may go back as a correct report of the proceedings had.

I shall report to you as soon as I hear from Mr. Heiser, as to just when he will be here, and I am quite confident that we can make satisfactory arrangements for signing and proper *proceedure* as may be best in the premises for the convenience of all concerned. It is unfortunate that neither Mr. Samuels nor the reporter nor you arranged for any time when the deposition would be completed and when the witness could go in to proceed with it. The deposition was closed without this being done by any of them. The witness being required to proceed in his business to go out of town and having heard nothing from you in the meantime, it would seem to me that the matter should be worked out to the best interests of all concerned, with the least inconvenience to any.

Please let me hear from you.

Respectfully yours,

LJM:S LEONARD J. MEYBERG S.

Agreed EXHIBIT 1.

Frank L. Hart
Official ... for

Exhibit #1 to the deposition of Heiser

FOREIGN GOVERNMENTS

ARGENTINA

Avenue D, bet. 8th and 6th Sts.

GROUP 152

WORKING OF MINES, ORE BEDS AND STONE QUARRIES

Compania Argentina de Perforaciones, Buenos Aires. Methods of boring.

Compania Especial de Perforaciones, Buenos Aires. Oil field methods, Comodoro Rivadavia.

General Direction of Exploitation of Comodoro Rivadavia's Petroleum Department of Agriculture. Petroleum methods and equipment.

General Direction of Mines, Geology and Hydrology of Department of Agriculture. Mining, survey and boring methods.

GROUP 153

MINERALS AND STONES, AND THEIR UTILIZATION

Andrade, Carlos M., Buenos Aires. Mica in sheets from the Cordoba Sierra.

Aust, Alfonso, Buenos Aires. Limestone from Olavarria.

Barta, Leopoldo, C. E., Comodoro Rivadavia. Distilling and refining petroleum products.

Brach, Eduardo, Buenos Aires. Mica in sheets from San Luis Sierra.

Cerrano y Cia, Buenos Aires. Lime factory. Lime.

Chaillon y Cia, Buenos Aires. Onyx from San Rafael, State of Mendoza.

Compania Productos Conen, Sociedad Anonima, Buenos Aires. Boracic acid; ulexite prod.

Compania Salinas Grandes, Buenos Aires. Salt from Salinas Grandes.

Coral y Arambaru, Buenos Aires. Gypsum, crude and refined from Rio Negro.

Darmstaedter, Luis, Buenos Aires. Ore from San Juan mine, Sierra of Famatina.

Dedillippi, Luis, Buenos Aires. Lime.

General Direction of Exploitation of Comodoro Rivadavia's Petroleum Department of Agriculture. Petroleum.

General Direction of Mines, Geology and Hydrology of Department of Agriculture. Collection of minerals.

Graciarena, Bernardo, Buenos Aires. Salt and graphic material.

Lacau & Cia, Buenos Aires. Granites and mylonites from Cerro Negro, Olavarria.

Mesquita, Salvador, Buenos Aires. Casterite and minerals of tin mines, Catamarca State.

Quiroga, German, San Luis. Marbles from Sierra of San Luis.

Reale, Domingo G., Buenos Aires. Marbles from Cordoba and San Luis Sierras.

Sociedad Anonima "Minas de Guandacol," Chilecito. Minerals.

State of San Luis. Onyx marble.

Sterki, Alejandro, Santa Elena. Gypsum, crude and labored.

Termas "Rosario de la Frontera," Sociedad Anonima, Salta. Mineral waters.

Territory of Los Andes. Gold, silver, copper, borates and other minerals.

Zambrano, Ing. Pedro, Buenos Aires. Gold ore.

GROUP 154

MINE, METALLURGICAL AND OIL MODELS, MAPS, PHOTOGRAPHS

Aust, Alfonso, Buenos Aires. Photos.

Defillippi, Luis, Buenos Aires. Photos.

General Direction of Mines, Geology and Hydrology of Department of Agriculture. Photos of surveys and mineral operations.

Schweitzer, Pablo, Buenos Aires. Maps.

GROUP 156

LITERATURE OF MINING AND METALLURGY

General Direction of Mines, Geology and Hydrology of Department of Agriculture. Statistics and publications.

AUSTRALIA

Location: Australian Pavilion.

Presidio Entrance, Opposite French Pavilion

GROUP 153

MINERALS AND STONES, AND THEIR UTILIZATION

Adelong—New South Wales. Auriferous quartz.

Abermain Colliery Co., Ltd—New South Wales. Section of coal seam worked.

Back Creek—Near Rockley, New South Wales. Black oxide of manganese.

Ballina—New South Wales. Platinum.

Bambrick, H.—Sapphiretown, Queensland. Cut sapphires.

Bambrick, V.—Sapphiretown, Queensland. Sapphires, cut and rough.

Barrier Mine, The—Wyalong, New South Wales. Auriferous pyritous quartz.

Battery Mount—New South Wales. Lode tin ore.

Black & White Tin Mine—Ardlethan, New South Wales. Tin ore in greisen.

Block 14 Mine—Torrington, New South Wales. Wolfram-bearing quartz-topaz rock.

Bow Creek Molybdenite Mines—Deepwater, N. S. Wales. Molybdenite ores.

British Broken Hill Proprietary Co.—N. S. Wales. Sulphide ore, lead & zinc concs.

Broadbent, R.—Broken Hill, N. S. Wales: Silver, lead, zinc minerals, collection.

Broken Hill Proprietary Co. Block 10—N. S. Wales. Sulphide ore.

Objector's EXHIBIT 1

Frank L. Hart
Official Shorthand Reporter

Exhibit #1 to the deposition of Heiser

Broken Hill Proprietary, Block 14—N. S. Wales. Sulphide ore.

Broken Hill Proprietary Co., Ltd.—N. S. W. Silver-lead-zinc ores, concs., spelter, etc.

Broken Hill South Silver Mg. Co.—N. S. W. Sulphide ore, lead & zinc concentrates.

Brookburn Coal & Shale Co.—Greta, N. S. W. Section of coal seam worked.

Burford, R.—Sapphiretown, Queensland. Cut sapphires.

Burraga Copper Mine—Burraga, N. S. Wales. Copper ores.

Butler's Tin Mining Co.—Torrington, N. S. W. Lode tin ore, tin oxide, slimes & fines.

C. S. A. Mine—Cobar, N. S. W. Copper ores, carbonate and sulphide ores.

Cadia Copper Mining Co.—Cadia, N. S. W. Copper ores.

Carpathia Tin Mining Co.—Ardlethan, N. S. W. Lode tin ore.

Christmas Gift Extended Gold Mg. Co.—Cullinga, N. S. W. Sulphide ore.

Chesney Copper Mine—Cobar, N. S. W. Copper ores.

Chick, C. W.—Sapphiretown, Queensland. Cut sapphires.

Cobar Gold Mines, Ltd.—Cobar, N. S. W. Pyritous ore & altered slate.

Cobar Copper, Ltd.—Wrightville, N. S. W. Copper ores.

Colen Peaks Mining Co.—Yerranderie, N. S. W. Native silver & oxidised, etc., ores.

Cope's Creek Central Tin Dredging Co.—Skeleton Creek, N. S. W. Stanniferous dirt.

Commonwealth Oil Corp. Co., Ltd., The—Sidney, N. S. W. Kerosene shale.

Commonwealth Portland Cement Co., The—Portland, N. S. W. Cement, limestone, etc.

Corner Block—Bygoo, Ardlethan, N. S. W. Tin ore in granite.

Corrimal-Balgownie Colliery Co.—N. S. W. Section of coal seam worked.

Cousen, I. G.—Sapphiretown, Queensland. Sapphires, cut and rough.

Crudoon (E. Dawson)—N. S. W. Siliceous sulphide ore. Copper ores.

Cunningar Mine—Near Harden, N. S. W. Auriferous quartz.

Currajong Mine—Wyalong, N. S. W. Auriferous quartz.

Daysprings Mine—Parkes, N. S. W. Auriferous quartz with iron & arsenical pyrites.

Department of Mines—Melbourne, Victoria. Models of gold nuggets found in Victoria.

Department of Mines—Brisbane, Queensland. Antimonite, limestone, copper ores, coal, chromite, pottery & fire clay, coke, gold ores, graphite, iron ores, magnesite, manganese ore, molybdenite, wolfram, tin ores & tin ingots, silver-lead-zinc ores, bismuth ores.

Department of Mines—Melbourne, Victoria. Victorian marbles, polished & mounted.

Department of Mines—Sidney, New South Wales. Collection of ornamental & building stones; collection of minerals & economic ores.

Department of Mines—Sydney, N. S. W. Model of the Broken Hill lode.

Dinmore Mines, Ltd.—Hillgrove, N. S. W. Antimonial gold ore & antimonite.

Electrolytic Refining & Smelting Co. of Australia—Port Kembla, N. S. W. Copper.

Emerson, D.—Rubyvale, Queensland. Cut sapphires.

Euriowie—Barrier Range, N. S. W. Lode tin ore.

Fifield, Henry and Ward—N. S. W. Magnesite.

Fraser's, Ltd.—Brisbane, Queensland. Opals and assorted gem stones.

Gibraltar Cons. Mines, The—Sheppardstown, Adelong, N. S. W. Hornblende granite.

Gladstone Mining Co.—Cobar, N. S. W. Copper ores.

Golden Fleece Mine—Wyalong, N. S. W. Auriferous quartz.

Golden Hill Lease (E. Dawson)—Crudoon, N. S. W. Pyritous quartz.

Gordon Brook—N. S. W. Chromite.

Grafton Copper Mining Co.—Cangai Mine, N. S. W. Copper ores.

Great Britain Sluicing Co.—Emmaville, N. S. W. Stanniferous wash dirt.

Great Cobar Mine—Cobar, N. S. W. Copper ores.

Great Cobar North Mine—N. S. W. Copper ores.

Great Northern Amalgamated Molybdenite Mg. Co.—Beerolong, N. S. W. Molybdenite.

Gulgong (L. Hasenkam)—N. S. W. Pyritous quartz.

Gulgong (C. E. Hilton)—Red Hill, N. S. W. Pyritous quartz.

Gundle Tin Mine—N. S. W. Lode tin ore.

Hart's Tin Mining Co.—Torrington, N. S. W. Lode tin ore.

Hillgrove, T. Snow—N. S. W. Dressed scheelite.

Holland, A.—Rubyvale, Queensland. Cut sapphires.

Holland, T.—Sapphiretown, Queensland. Sapphires, cut & rough.

Holland, W.—Sapphiretown, Queensland. Sapphires, cut & rough.

Homeward Bound Tin Mining Syndicate—Ardlethan, N. S. W. Lode & concentrated tin ore.

Hoskins Brothers, Eskbank Ironworks—Lithgow, N. S. W. Iron ores, limestone, etc.

Iron Duke Mine—Cadia, N. S. W. Hematite, limonite and magnesite.

Junction North Broken Hill Mine—N. S. W. Silver-lead-zinc ores.

Junction Reefs, Sheehan's Mine—N. S. W. Auriferous pyritous ore.

Junction Reefs, Lyndhurst Ry. & Mines, Ltd.—N. S. W. Auriferous pyritous ore.

Lone Hand Mine—Bygoo, Kamarah, N. S. W. Lode tin ore.

Major's Creek—N. S. W. Auriferous pyritous quartz.

Marks, Percy—Sydney, N. S. W. Opals, rare black & light harlequin, cut & rough; precious & semi-precious gems; gold.

McIntyre, O., & Flynn, E.—Rubyvale, Queensland. Cut sapphires.

Metropolitan Coal Co.—Helensburgh, N. S. W. Section of coal seam worked.

Mote—Hillgrove, N. S. W. Antimonite.

Mitchell's Creek—N. S. W. Auriferous pyritous quartz.

Mole Tableland—N. S. W. Tinstone in granite.

Reporter's EXHIBIT 1

Frank L. Hast
Official Shorthand Reporter

Exhibit #1 to the deposition of Heiser

Morton, W.—Sapphirestown, Queensland. Cut sapphires.

Mount Boppy Gold Mining Co.—N. S. W. Oxidised & siliceous sulphide ore.

Mount Jasper Copper Mine—Yarrus, N. S. W. Copper ores.

Mount Keira Colliery—N. S. W. Section of coal seam worked.

Mount Pleasant Coal & Iron Mg. Co.—N. S. W. Section of coal seam worked.

Newcastle Coal Mining Co.—Merewether, N. S. W. Section of coal seam worked in A pit.

New Barrageerang Silver Mining Co.—N. S. W. Sulphide ore (galena, fahlore, etc.).

Newsome, L.—Sapphirestown, Queensland. Sapphires, cut & rough.

Nisbet, J. S.—Sapphirestown, Queensland. Sapphires, cut & rough.

North Broken Hill, Ltd.—N. S. W. Silver-lead-zinc ores.

North Bulli Colliery Co.—N. S. W. Coke; section of coal seam worked.

Nundle—N. S. W. Chromite.

Occidental Gold Mining Co.—Cobar, N. S. W. Siliceous sulphide ore.

Ottery Tin Lodes—Tent Hill, N. E. W. Lode tin ore.

P. D. Copper Mining Co.—Grafton, N. S. W. Copper ores.

Pambula—N. S. W. Auriferous felsite.

Peak Hill Mine—Peak Hill, N. S. W. Auriferous lodestone.

Perseverance Mine—Adelong, N. S. W. Auriferous pyritous quartz.

Petersen, J.—Sapphirestown, Queensland. Cut sapphires.

Petrie & Party—Tenterfield, N. S. W. Wolfram, molybdenite in quartz & granite.

Phoenix Mine—Parkes, N. S. W. Auriferous quartz.

Potter's Silver Mine—Condobolin, N. S. W. Sulphide ores.

Pulganbar Quicksilver & Copper Mining Co.—Grafton, N. S. W. Cinnabar & mercury.

Red Cross Lode—Emmaville, N. S. W. Lode tin ore.

Roberts & Heine—Tenterfield, N. S. W. Molybdenite in quartz, etc.

Sheppard, D.—Sapphirestown, Queensland. Cut sapphires.

Sulphide Corporation, Ltd. (Central Mine)—Broken Hill, N. S. W. Sulphide ore.

Sydney Tin Smelting Co.—N. S. W. Tin ore, tin ingots, ribbon tin & grain tin.

Technological Museum—Sydney, N. S. W. Ornamental & building stones, collection.

Timbarra—N. S. W. Auriferous granite.

Tinto Mine—Cobar, N. S. W. Copper ores.

Tow's Lewis Ponds Mine—Orange, N. S. W. Massive iron pyrites.

Torrington Lode—Torrington, N. S. W. Lode tin ore.

True Blue Mine—Wyalong, N. S. W. Auriferous pyritous quartz & impregnated granite.

Umberumberka—Barrier Range, N. S. W. Massive sulphide ore.

Various Localities—N. S. W. Specimens of alluvial and reef gold.

Vegetable Creek Tin Mining Co.—Emmaville, N. S. W. Tin oxide & stanniferous wash dirt.

Webb's Mine—Emmaville, N. S. W. Sulphide ore.

Wheal Australia—County Gough, N. S. W. Lode tin ore.

Whipstick Mines, Ltd., The—Near Wyndham, N. S. W. Molybdenite in granite.

White Crystal Tin Mining Co.—Ardlethan, N. S. W. Granite with rensiterite.

White Rock—Drake, N. S. W. Sulphide ore.

Will Will Copper & Silver Mine—Macleay River, N. S. W. Copper ores.

Works Department—Brisbane, Queensland. Building stone, sandstone and granite.

Zinc Corporation (South Blocks Mine)—Broken Hill, N. S. W. Silver-lead-zinc ores.

GROUP 135

METALLURGY

Bow Creek Molybdenite Mines—Deepwater, N. S. W. Concentration molybdenite ores.

British Broken Hill Proprietary Co.—N. S. W. Lead & zinc concentrates.

Broken Hill Proprietary Co., Ltd.—N. S. W. Concentrates, spelter, antimonial lead, etc.

Department of Mines—Brisbane, Queensland Blister copper & copper ingots.

Hoskins Brothers Ironworks—Eskbank, N. S. W. Coke, pig-iron, angle-iron, etc.

Sydney Tin Smelting Co.—N. S. W. Tin ingots, ribbon tin & grain tin.

Zinc Corporation (South Blocks Mine)—Broken Hill, N. S. W. Lead & zinc concentrates.

GROUP 136

LITERATURE OF MINING AND METALLURGY

Department of Mines—Sydney, N. S. W. Publications of Geo. Survey, of N. S. W.

BOLIVIA

Location: Mines Paleos, Av D. bet. 9th & 10th Sts.

GROUP 133

MINERALS AND STONES, AND THEIR UTILISATION

Abelli & Cia, Aviaya. Tin ores.

Bolivia, Potosi. Silver ores, ruby, silver, blende.

Bolivia Tin Mines, Ltd., Vilaque. Tin ores.

Calbimonte, J. P., Potosi. Tin ores.

Chaquesta. Tin ores.

Cia. General de Minas en Bolivia, La Paz. Tin ores.

Compania Colquechaca Anllagas de. Tin and silver ores.

Compania Corcoro de Bolivia, La Paz. Native copper and copper ores.

Compania Estanifera Colquiri, La Paz. Tin ores.

Compania Guadalupe de Bolivia, Portugalete. Silver ores, galena.

Compania Guerrico, Potosi. Copper and silver ores.

Compania La Consolidada, Colquechaca. Tin and silver ores.

Compania Minera de Oruro, Oruro. Tin and silver ores.

Compania San Jose de Oruro, Oruro. Tin and silver ores.

Objector's Exhibit 2.

August 26, 1941.

Leonard J. Meyberg, Esq.
Addressed

Dear Mr. Meyberg:

I am herewith conforming to your suggestion that I reduce to writing my request below appearing, made to you this morning while taking the deposition of M. E. Heiser upon the objections to the claim filed by him in the matter of the Bankruptcy of Leonard J. Woodruff pending in the United States District Court in and for the Eastern District of Oklahoma.

I request that you consent to the exhibition to me or to one of my office associates, by the Collector of Customs of the office in San Francisco, California, or other appropriate official employed at the branch Customs House in said City, or by the Commissioner of Customs, Washington, D. C., of the records of importations by or on behalf of said Heiser from Australia and entering through the Port of San Francisco and the payment of duties thereon for the years 1914-1928 inclusive.

Very truly yours,

OS: OSCAR SAMUELS.
LC

Exhibit #3 to the deposition of Heiser

Mrs H.J.Loller #2

to controle the Sapphires of Australia.

I sent the Lease of our big mine to Mrs Heiser last mail & it is on this Lease that I want to put the Dredge as there are verry large &fine S apphires to be Dredged there.

Would it be Possible for you to lend the Company $6.000 for 18 months, so that we could get started & you can be paid from the sale of stones from the mine, also from the sale of the stocks in this you are taking no chances, Because we have the dredge all ready to work also plenty of water.

Mr B.Schlessinger, of S.F. is to form the Company for us & I know that if he does & you lend a helping hand we will soon be going on a big way, so please do as you think best Partner, but I am anxious to start producing & that would be the means of selling a lot of stock,

I think that the Company should be formed large enough so that we could sell up to $150.000.00. Bonds, or stocks. But I must have 55% reserved for myself & associates of course you understand you are one of them.

I had a letter from Mrs Heiser She said how nice you have been to her, I certainly appreciate that, & some day hope to show you and here

How are you & all the family I hope well? I am fine all is O.K. here now thanks to you, its only a matter of working capitol & then we will be in easy street,

Trusting that you receive this O.K. & are well

I AM

YOUR TRULY

M.E.Heiser

[Objectors' exhibit 4, original bill of lading, August 9, 1928, is identical with the original bill of lading which appears as part of objectors' exhibit QQ, page 1117.]

[Objector's exhibit 5, receipt for delivered freight, August 16, 1928, Morrie Heisen to Pacific Electric Company, appears at page 683 as objectors' exhibit 2-1 to the deposition of Norman R. Dunn. The endorsement of the referee, which is a part of objectors' exhibit 5, appears as a part of objectors' exhibit QQ, page 1119.]

Objectors Exhibit 6.

Number 10 1000 Shares

Incorporated Under the Laws of the State of Nevada

Golden State Gem Company of Nevada

Capital Stock 500,000 Shares
Without Nominal or Par Value

150,000 Shares Preferred Stock 350,000 Shares Common Stock

This is to Certify that Morrie Heiser is the owner of One Thousand Shares of the Common Capital Stock of the Golden State Gem Company of Nevada, transferable only on the books of the Corporation by the holder hereof, in person or by Attorney, upon surrender of this Certificate properly endorsed.

The preferred stock shall entitle the holders thereof to receive from the surplus or net profits of the corporation, when and as declared by the Board of Directors, cumulative dividends at the rate of eighty cents (80c) per share per annum, payable on such dates during the months of January and July of each year after issuance, as determined by the Board of Directors and before any dividends shall be paid or applied to the common stock.

In the event of the dissolution, liquidation or winding up of the corporation (whether voluntary or involuntary) the preferred stock shall entitle the holders thereof to receive the sum of Ten Dollars ($10.00) per share together with all dividends accumulated and unpaid thereon before any

assets shall be applied to the common stock but shall not thereafter participate in the assets of the corporation.

The preferred stock shall be subject to redemption in whole or in part at any time after five (5) years from the date of issuance thereof until ten (10) years from the date of issuance thereof upon payment to the holders thereof of the sum of Ten Dollars and Fifty Cents ($10.50) per share together with all dividends accumulated and unpaid thereon. After ten (10) years from the date of issue all preferred stock then issued and outstanding and unredeemed must be redeemed by the corporation by payment to the holders thereof of the sum of Ten Dollars ($10.00) per share together with all dividends accumulated and unpaid thereon. The directors shall have power to create and provide for such fund or funds as in their discretion shall be found necessary to provide for the redemption of the preferred stock as herein specified. The time and manner of redemption shall be as from time to time determined by the Board of Directors.

The preferred stock shall not be entitled to vote upon any questions affecting the management or affairs of the corporation nor shall the holders thereof be entitled to notice of stockholders' meetings except as otherwise provided by law, the exclusive voting right to be vested in the common stock; provided, however, that in the event the corporation shall fail to pay or declare dividends at the dividend rate upon the preferred stock, and such delinquency shall continue for a period of eighteen (18) months, then and in that event, the preferred stock in respect to which such delinquency occurs shall be entitled to the same voting rights as attach to the common stock and shall also be entitled to notice of stockholders' meetings. Upon payment, however, to the preferred stock of all dividends accumulated and unpaid thereon, or the setting aside of the funds for the payment thereof, the voting rights of the preferred stock shall again cease, and so on from time to time as such delinquencies may occur or be terminated.

Both preferred and common stock without nominal or par value may be issued by the corporation from time to time for such consideration as shall from time to time be determined by the Board of Directors.

In Witness Whereof, the Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 24th day of August, A. D. 1928.

MORRIE HEISER, Secretary

WALTER CALVIN SMITH, President.

(Seal)

For Value Received, I hereby sell, assign and transfer unto Maudie James Loller

.....Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

.....Attorney

to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises. Dated 25 August, 1928.

In Presence of

..... MORRIE HEISER.

Notice. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Number 11 1000 Shares

Incorporated Under the Laws of the State of Nevada

Golden State Gem Company of Nevada

Capital Stock 500,000 Shares
Without Nominal or Par Value

150,000 Shares Preferred Stock 350,000 Shares Common Stock

This is to Certify that Morrie Heiser is the owner of One Thousand Shares of the Common Capital Stock of the Golden State Gem Company of Nevada, transferable only on the books of the Corporation by the holder hereof, in person or by Attorney, upon surrender of this Certificate properly endorsed.

[The following portions of the certificate are identical with those portions of the certificate which appear at page 957.]

In Witness Whereof, the Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 24th day of August, A. D. 1928.

MORRIE HEISER, Secretary — WALTER CALVIN SMITH, President.

(Seal)

For Value Received, I hereby sell, assign and transfer unto Maud James Loller.

.....Shares of Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint.....Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises. Dated 25 August, 1928.

In Presence of

..... MORRIE HEISER.

Notice. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Number 12 — 3000 Shares

Incorporated Under the Laws of the State of Nevada

Golden State Gem Company of Nevada

Capital Stock 500,000 Shares

Without Nominal or Par Value

150,000 Shares Preferred Stock — 350,000 Shares Common Stock

This is to Certify that Morrie Heiser is the owner of Three Thousand Shares of the Common Capital Stock of the Golden State Gem Company of Nevada, transferable only on the books of the Corporation by the holder hereof, in person or by Attorney, upon surrender of this Certificate properly endorsed.

[The following portions of the certificate are identical with those portions of the certificate which appear at page 957.]

In Witness Whereof, the Corporation has caused this Cer-

tificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 24th day of August, A. D. 1928.

MORRIE HEISER, Secretary. WALTER CALVIN SMITH, President.

(Seal)

For Value Receive, I hereby sell, assign and transfer unto Maudie James Loller .....Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint.....Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises. Dated 25 August, 1928.

In Presence of

Mrs. Lillian Heiser MORRIE HEISER.

Notice. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Number 13 1000 Shares

Incorporated Under the Laws of the State of Nevada

Golden State Gem Company of Nevada

Capital Stock 500,000 Shares
Without Nominal or Par Value

150,000 Shares Preferred Stock 350,000 Shares Common Stock

This is to Certify that Morrie Heiser is the owner of One Thousand Shares of the Common Capital Stock of the Golden State Gem Company of Nevada, transferable only on the books of the Corporation by the holder hereof, in person or by Attorney, upon surrender of this Certificate properly endorsed.

[The following portions of the certificate are identical with those portions of the certificate which appear at page 957.]

In Witness Whereof, the Corporation has caused this Certificate to be signed by its duly authorized officers and

its Corporate Seal to be hereunto affixed this 24th day of August, A. D. 1928.

MORRIE HEISER, Secretary. WALTER CALVIN SMITH, President.

(Seal)

For Value Received, I hereby sell, assign and transfer unto Maudie James Loller .....Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint.....Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises. Dated 25 August, 1928.

In Presence of

..... MORRIE HEISER.

Notice. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Action No. 238348.

Defendant's Exhibit No. 3 (5 certificates).

F. I. Thiebaut, Deputy Clerk.

Number 14 1000 Shares

Incorporated Under the Laws of the State of Nevada

Golden State Gem Company of Nevada

Capital Stock 500,000 Shares
Without Nominal or Par Value

150,000 Shares Preferred Stock 350,000 Shares Common Stock

This is to Certify that Morrie Heiser is the owner of One Thousand Shares of the Common Capital Stock of the Golden State Gem Company of Nevada, transferable only on the books of the Corporation by the holder hereof, in person or by Attorney, upon surrender of this Certificate properly endorsed.

[The following portions of the certificate are identical with those portions of the certificate which appear at page 957.]

In Witness Whereof, the Corporation has caused this Cer-

tificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 24th day of August, A. D. 1928.

MORRIE HEISER, Secretary. WALTER CALVIN SMITH, President.

(Seal)

For Value Received, I hereby sell, assign and transfer unto Maudie James Loller .....Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint.....Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises. Dated 25 August 1928

In Presence of
Mrs. Lillian Heiser MORRIE HEISER.

Notice. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Heiser Stock.

*Matter in italics appears in handwriting on original.

Objectors' Exhibit 7.

United States National Bank 16-18 12
N. E. Corner Eighth & Spring Streets
Los Angeles, Calif., Sept 21, 1928 No. 33

Pay to the order of M. E. Heiser or Morrie Heiser: $350.00
Three hundred fifty ..... Dollars

GOLDEN STATE GEM CO. OF NEV.
Pres WALTER CALVIN SMITH
Sec MORRIE HEISER

(Perforated bank stamp)—Paid 10-4-28.

On reverse:

Endorsed by Morrie Heiser.

Endorsed by E. W. Lobree.

Two bank stamps.

Objector's Exhibit 9

AUSTRALIAN AMERICAN GEM MINING CO

TO THE U. S. NATIONAL BANK OF LOS ANGELES, CAL.

X Ed Lobree

1-23-29

8021 Stanford Ave. Los Angeles Cal

TELEPHONE Longview 5715 INTRODUCED BY

DATE 7/21/28 BUSINESS Mfg.

Objector's Exhibit 9

DEPOSITED WITH

United States National Bank

OF LOS ANGELES, CAL.

9 July 1928

IN MAKING THIS DEPOSIT AND AT ALL TIMES IN DOING BUSINESS WITH THIS BANK THE DEPOSITOR SPECIFICALLY AGREES TO ALL OF THE TERMS AND CONDITIONS PRINTED ON THE REVERSE SIDE HEREOF

Australian American Gem mining Co.

DEPOSITOR

PLEASE LIST LOCAL CHECKS BY NUMBER OF DRAWEE BANK. OUT OF TOWN ITEMS BY NUMBER OR NAME OF CITY

		DOLLARS	CENTS
COM'L ACCT	CURRENCY		
SPEC SAVINGS	COIN	38	0 —
TERM NO. 4	CHECKS	7	50 —
		20	75 —
ACCOUNT		30	5 —

TOTAL

Signature of

TO THE U. S. NATIONAL BANK OF LOS ANGELES, CAL.

Above is the signature of

who is hereby authorized to sign and endorse checks, notes and drafts and transact all business with your bank in name and as attorney

Date

[Objectors' exhibit 10, letter, October 18, 1928, Heiser to Smith & Barstow, is identical with objectors' exhibit 3 which appears at page 301.]

Objector's Exhibit 11.

Strand Palace Hotel, London, W. C. 2.

11th October, 1929.

Attention International Trading Company Paris.

Dear Jeff & Mr. Lequantrie,

I sincerely hope that you had a pleasant trip in California and have returned safely and ready for some real business.

Now I have some of the most prominent British people interested and they have under their option in British Guiana 140 miles concession to build a railway and two miles of country each side with all gold and diamond rights and timber. This timber is comprised of 50% greenheart, 25% moura and the remainder is pulping timbers. The first two mentioned are in very large quantities and some millions of sleepers per year can be taken by America which are required for railway ties. The greenheart is particularly *used* required for wharves and used extensively in the Panama Canal also in all classes of dock work and is very useful for many types of furniture. In general, it is a very useful and valuable timber.

In Germany there is a shortage of paper and consequently pulping timbers could be utilized for commercial purposes. There is abundance of waterfalls which can be harnessed for electrical power to run the railway, operate the mines and the whole of the timber industry, as the greatest falls in the world are located in the centre of this district and a permit can be had to enable you to take as much power as you may require.

This English Syndicate would be prepared to hand over the whole of the concession to an American or French formed Company for a consideration in fully paid up shares in that Company, providing everything was bona fide. Of

course a British railway in a British possession with the resources that this railway would tap should naturally have some of these prominent Britishers represented on the Board of the Company.

Mr. Beatrix

Now Jeff, Mr. Lequantrie / and Walker, if you are interested in this you have only got to say so and you are in the cellar with me and we can put our friends on the ground floor as I have already communicated with prominent New Yorkers and Detroit people who have expressed a desire to come in with me, and I thought perhaps it was only right that I should let you know what I was doing, in case you wanted to come upon the wagon with me.

Please let me know one way or the other, how you feel about this proposal. I can supply you with all Government data on the railway, timber, gold and diamonds. One years production alone of diamonds reach over one million pounds.

Your family I hope are all well, and that business is O.K. with you.

I am,

Yours faithfully,

M. E. HEISER

*Matter in italics appears in handwriting on original.

Objector's Exhibit 12.

Nov. 14, 1928.

My dear Maudie & Will:—

After many interviews in Paris with Lequentric Beatrix, and Jeff, Mr. Beatrix and Lequentric came to the conclusion that on account of the excessive incorporation taxes in Paris, it would be more *advantagious* to all concerned, if a corporation was formed in *Calif.* as the selling Corporation, and that corporation to contract with the Golden State Gem Co. of Los Angeles, for 20 years at our prices. Unfortunately Jeff had to leave for home before his associates had found what they thought the best solution to handle the rough gem trade in Europe, so a week after *Jeffs* departure, they finally decided this the best course to take, especially as

the Queensland Government are offering us their entire stocks, which means the control of Queensland gems and practically the whole of N.S.W. this is a very wonderful opportunity for Jeff, but I think it would mean his living in Paris until the selling organization was properly established in Europe.

Mr. Beatrix sold one parcel of seconds (30 ounces) for 35,000 *franks*, for which I allowed them 10%, this was done chiefly for them to try out the markets.

Jeff has Major Mallailie, Mr. Fickett whom I am sure will help and with your assistance he should be able to successfully form a company to get all the money he needs to successfully operate his sales organization in Paris.

As you are aware Maudie we have about 25,000 ounces of cheap industrial sapphire in N.Y. if you or Jeff need them for the formation of this corporation, you can have them, and it should enable you to control the selling corporation. These stones are in the Lincoln Vaults, 60 East 42nd St., N.Y. there is a small *acumulation* of rent on them, but no other *incumbrances*, so if you need them for the above purpose consider this paragraph a deed of gift.

You know Maudie how anxious I have been for years to get a European connection like you and Jeff have kindly put me in touch with, of *cause* it will take a man like Jeff to handle the *french* merchants, as he can speak their language, I can't.

I had to go to London to make arrangements about the rough sapphires belonging to the Queensland Gov. and I wrote full particulars about the gems to Mr. Beatrix and Lequentric, because they are offered to me at a greatly reduced price of what they cost.

Mr. Lobree was censuring me *about* opening a cutting plant in Europe, Maudie this is absurd as you must know.

I was very much worried about you going to the hospital but after hearing from Mrs. Benjamin that it was for gland treatment and did not think it was serious I was very much relieved, and sincerely hope you are home now enjoying the best there is in life.

Well Bill how are you and how is the Real Estate going I hope you closed on that big deal you were working on when I left.

The family are all having a lovely time, but think there is no place like Calif.

Trusting that you are well and hoping to see you soon, and that you were happy over the arrival of the new baby and that you will have much happiness from the *lettle* tot, also that Bill is a proud Grandfather; gee Bill I would love to see you running around about 3:30 a.m. in your little short shirt, nursing the baby.

That large light opal that I said we would give to your Jamie, well we did and then gave it to Mr. Beatrix to carve her figure in it in the *Ballon* dance, and she was *verry* pleased and gave us some of her photos, which I will show you on our return.

Will appreciate getting a cable from Jeff to let me know if he will form the corporation or not as I am under a very heavy expense here and just waiting to hear from him now.

I am cabling to you this week and telling you that the french agents want Jeff to form a company in America and contract with the Golden State Co. for twenty years, at our prices.

There is no doubt Maud and Will that the french markets control the sapphire markets for the world and with Jeff's connection there is not the slightest doubt that he can get the best business in Paris for these gems, and I feel the same as the frenchmen that it is better for all concerned, that the company be formed in America, Taxes and many other conditions prevail in France that make it almost impossible.

I would have written to you earlier on this matter but I did not, as it took several weeks before this final decision could be made. Now I sincerely hope Maudie that you can help Jeff to hurry things along, as Australian end are urgently requesting me to return to Australia, and the French merchants need large quantities of large best rough and I have not any more left.

Trusting that this letter finds you in the best of health and enjoying the best

I am

Very Sincerely

MORRIE HEISER

Objector's Exhibit 13.

Strand Palace Hotel, Strand, W.C.2. 9th October 1929.
M. Le Quentrix, International Trading Company, Paris.

Dear M. le Quentrix,

I note you have returned from California and if you don't mind I would be very pleased if you could return the Coal Report which I left with you at Mr. Beatrix's place.

Has Walker returned with you and when do you expect Jeff in from California?

I hope you had a very nice and pleasant time in California. When I was in Paris last I called upon Mr. Beatrix, but unfortunately he had been called out of Town for a few days, and I had some important business which called me back to London before his return.

With kind regards to all our Friends in Paris.

Yours sincerely,

M. E. HEISER.

Exhibit #14 to the deposition of Heiser

NAME GOLDEN STATE GEN COMPANY

UNITED STATES NATIONAL BANK OF LOS ANGELES

I hereby agree to abide by the By-Laws and Rules of the United States National Bank governing deposits and the withdrawal of funds, and agree that checks or other orders drawn on my/our account will be payable only at the office of the Bank where the account is kept.

SIGN HERE IF / Golden State Gen Co

SIGN HERE IF Walter Calvin Smith

Business Address 726 - 2[illegible] Ave. Phone MI - 0318

Residence Address

Occupation

Referred To

Introduced by M. Heiser - (Australian - Am Min Co) Date Aug - 16/28

FORM 170 8-27 50 GEO. ROSS JOINT. CONSECUTIVE 9773 -

The undersigned hereby agree each with the other and the United States National Bank, of Los Angeles, California, that all items, securities or moneys deposited by the undersigned, or either of them, or any other party with said Bank, to the credit of the undersigned in this Commercial Account are and shall be owned by the undersigned jointly with full right of survivorship, and be subject to check or order of either of them, or the survivor of either, and payment thereof shall discharge said Bank from all liability to either, or to the heirs, administrators or assigns of either. Upon the death of either, said deposit shall be the absolute and exclusive property of the survivor, and thereupon to be paid to the order of the said survivor. The undersigned also hereby authorize said Bank to pay to the order of the said survivor all dividends, interest, rights and other moneys payable to either and deposit to the credit of said account. The undersigned also hereby authorize the Bank to receive presentation of Form Bank by either party. In the case of death of either, it is understood that no checks drawn against this account by the survivor, will be honored until evidence is furnished that the requirements of the Inheritance Tax Laws of the State have been complied with. This agreement shall not be changed or terminated except by written notice to said Bank.

SIGN HERE IF / Golden State Gen Co

SIGN HERE IF Walter Calvin Smith JOINT DEPOSITORS

United States National Bank of Los Angeles

DATE AUG 16 1928 BY

Exhibit #15 to the deposition of Heiser

DEPOSITED WITH

United States National Bank

OF LOS ANGELES, CAL.

AUG 16 1928 192

IN MAKING THIS DEPOSIT AND AT ALL TIMES IN DOING BUSINESS WITH THIS BANK THE DEPOSITOR SPECIFICALLY AGREES TO ALL OF THE TERMS AND CONDITIONS PRINTED ON THE REVERSE SIDE HEREOF

Golden State Gen Co

DEPOSITOR

By Hallis Calvin Smith

PLEASE LIST LOCAL CHECKS BY NUMBER OF DRAWEE BANK. OUT OF TOWN ITEMS BY NUMBER OR NAME OF CITY.

		DOLLARS	CENTS
COM'L ACC'T	CURRENCY	1240	=
SPEC. SAVINGS	COIN		
TERM No.	CHECKS	6783	=
		1200	=
		9223	-
	TOTAL		

NEW ACCOUNT

W. L. S.

Interrogatories to Be Submitted to D. B. Edward.

1. Interrogatory number one: Will you please state your name, age, residence, business or occupation and how long you have been engaged in such business or occupation?

Answer: David Barnett Edward, 61, of 16 Barton Court, Barton Canberra Australian Capital Territory, Australia, civil servant for 45 years.

D. B. Edward

2. Interrogatory Number Two: What connection, if any, did you have, either personally or on behalf of the government of the Commonwealth of Australia of the governments of Queensland or New South Wales, with the Panama-Pacific International Exposition held in San Francisco in the State of California, United States of America, in the year 1915? In this connection, if you state that you were connected with the Exposition, will you please state whether or not you attended the Exposition and if you did what your duties were and what part of the time you were there, where you spent that time and what you did while there.

Answer: I was Executive Secretary to the Australian Government Commission at the Panama Pacific International Exposition, San Francisco in 1915. I attended the Australian Pavilion as executive officer of the Commission each day during the prescribed office hours.

D. B. Edward

3. Interrogatory Number Three: Please give the names, if you can, of others who represented either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales at said Exposition and particularly with reference to the mineral and gem exhibits.

Answer: The Australian Commissioner was the Hon. Alfred Deakin, former Prime Minister of Australia. The Commissioners representing the States of New South Wales and Queensland respectively were the Hon. Neil Neilsen and Mr. James Robertson. The mineral and gem exhibits from these States were under the direct supervision of Mr. Geo. J. Jones New South Wales and Mr. James Campbell Queens

land.* *C. W. D. who were sent by their respective Governments from Australia.*

D. B. EDWARD

4. Interrogatory Number Four: Are you acquainted with M. E. Heiser, also known as Morrie E. Heiser and also known as Maurice Emanuel Heiser? If you state that you are acquainted with a Mr. Heiser, will you please state how long you have known him and what has been the extent of your acquaintance with him?

Answer: The only occasion I met Mr. Heiser was at the Australian Pavilion in San Francisco and my only acquaintance with him was during the short period he occupied a bench in the Pavilion. I take him to be identical with M. E. Heiser or Morrie E. Heiser or Maurice Emanuel Heiser as there was no other person of that name whom I have met anywhere than in the Australian Pavilion.

D. B. EDWARD

5. Interrogatory Number Five: Will you please state whether or not you were acquainted with the exhibits of the Commonwealth of Australia and the governments of Queensland and New South Wales at the Panama-Pacific International Exposition? If you say you were acquainted with such exhibits, will you please state whether or not such governments exhibited at said Exposition sapphires, opals, zircons and other minerals and the extent of such exhibits at such Exposition, together with the building or buildings in which such exhibits were housed, if you recall?

Answer: I had a general acquaintance with the wide range of exhibits in the Australian Pavilion. Although the six Australian States were represented by various exhibits both primary and manufactured, the only exhibits of precious stones or gems including those mentioned in this interrogatory were sent by the Governments of New South Wales and Queensland. I cannot give any information as to the extent of such exhibit but the collection of gems and precious stones were sent as a collection for which the respective Governments assumed responsibility.

D. B. EDWARD

*Matter in italics appears in handwriting in ink on original.

6. Interrogatory Number Six: Will you please state whether or not Mr. M. E. Heiser had any connection with said Exposition as a representative of either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales?

Answer: No person of the name of Heiser I state most definitely had any official standing as a representative in the Australian Pavilion of either the Commonwealth Government of Australia or of any of the State Governments of Australia.

D. B. Edwards

7. Interrogatory Number Seven: Will you please state whether or not Mr. Heiser had an exhibit or display of his own at the Exposition and if so, the extent and size of the exhibit or display according to your best knowledge and recollection and the place where it was housed. Also the length of time the exhibit was maintained by Mr. Heiser and whether or not he maintained the same during the course of the entire Exposition?

Answer: To the best of my knowledge and belief no person of the name of Heiser or any other person had an individual exhibit or display at the Exposition.

D. B. Edwards

8. Interrogatory Number Eight: If you state that Mr. Heiser had an exhibit or display of his own at the Exposition and that the same was not maintained during the entire course thereof, will you please state, if you know, why the same was not maintained by Mr. Heiser until the Exposition closed?

Answer: Mr. Heiser was allowed to occupy a small bench in the Australian Pavilion to give an exhibition of cutting certain precious stones mainly rough opals, which to the best of my belief he brought at his own expense from Australia. No charge was made for this bench nor did the Australian Commission receive any payment from Mr. Heiser.

D. B. Edwards

9. Interrogatory Number Nine: If you state that Mr. Heiser had a display or exhibit at the Exposition, will you

please state the names of some of the others who had exhibits in the same building and at the same place as Mr. Heiser had his display or exhibit.

Answer: No person had an individual exhibit of any sort. All minerals and precious stones and all exhibits whatsoever in the Australian Pavilion were displayed as Government exhibits to bring the resources of Australia before the American public. It is true that certain precious stones were collected from individuals and firms by Governmental authorities in Australia but they were displayed in the Australian Pavilion as a Government collection.

D. B. EDWARD

10. Interrogatory Number Ten: If you state that either the Government of the Commonwealth of Australia or the governments of Queensland or New South Wales had either a mineral or gem exhibit at the Exposition, will you please state, if you know, who was in charge of the exhibits and the extent of the exhibits, if you know.

Answer: See answer to No. 3

D. B. EDWARD

11. Interrogatory Number Eleven: Will you please state any further knowledge or information which you may have with reference to Mr. Heiser's connection, if any, with the Exposition as a representative of your government or as an individual exhibitor?

Answer: See answer to No. 7. Most definitely Mr. Heiser had no official standing in the Australian Pavilion. The permission granted to him to occupy a small bench in the Pavilion was of short duration because it was found that Mr. Heiser had contravened the policy and directions of the Australian Commission that no articles of any kind were to be sold in the Australian Pavilion during the currency of the Exposition.

D. B. EDWARD

12. Interrogatory Number Twelve: Will you please state whether or not the governments of Queensland or New South Wales or the government of the Commonwealth of Australia shipped any sapphires, zircons or opals from Aus-

tralia to San Francisco, Which sapphires, zircons and opals were the property of M. E. Heiser and which were exhibited at said Exposition in 1915 by said governments or either of them?

Answer: Neither the Commonwealth Government of Australia nor the Governments of the States of New South Wales and Queensland shipped on Mr. Heiser's behalf any of the stones mentioned.

D. B. EDWARD

13. Interrogatory Number Thirteen: Will you please state, if you know, whether or not said M. E. Heiser had a commission either by letter or other government document to represent either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales, or either of them, at said Exposition?

Answer The answer is most definitely No.

D. B. EDWARD
(Signature of Witness)

Commonwealth of Australia Canberra, Australian Capital Territory, 5th February 1943.

I, Cyril Walter Davies of Canberra in the Australian Capital Territory Notary Public, having been duly commissioned by the United States District Court in and for the Eastern District of the State of Oklahoma, United States of America, to take the deposition of D. B. Edward of Canberra, A. C. T., upon written interrogatories do hereby certify that in pursuance of such commission I caused the said D. B. Edward to appear before me and did then and there administer to him an oath, that his answer to such interrogatories would be the truth, the whole truth and nothing but the truth and the said D. B. Edward after having so been duly sworn did testify and did answer the interrogatories so propounded to him as set forth in the foregoing interrogatories and answers and that the answers to said interrogatories were correctly recorded by me and are the true and correct answers of said D. B. Edward thereto.

I further certify that I am not interested in any way in

the event of this action and I am not an attorney for [illegible] related to any of the parties connected therewith.

CYRIL W. DAVIES Notary Public Canberra
(Seal) Australian Capital Territory Australia

Commonwealth of Australia State of New South Wales City of Sydney Consulate General of the United States of America ss.

I, the undersigned, Consul of the United States of America at Sydney, Australia, duly commissioned and qualified, do hereby certify that, to the best of my knowledge and belief, the signature subscribed to the document hereto attached, i.e. Depositions by David B. Edward in the Matter of Edward J. Woodruff, Bankrupt, in the United States District Court in and for the Eastern District of Oklahoma is the signature of Cyril Walter Davies a Notary Public in and for the State of New South Wales, of the Commonwealth of Australia, and that by virtue of said office he is empowered to:—

take acknowledgments of the execution of documents, administer oaths for general purposes, under his official seal;

and that the seal accompanying said signature is the seal of said office.

Witness my hand and the seal of the Consulate General of the United States of America at Sydney, Australia, this eleventh day of February, 1943.

CHARLES H. DERBY, Consul of the
(Seal) United States of America.

(Cancelled American Foreign Service Fee Stamps)

Service No. 164 Fee $2.00 — 12 Sd. Item 31.

For the contents of the annexed document the Consulate General assumes no responsibility.

Filed Mar. 12, 1943. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

Commission for the Taking of Depositions.

The United States of America To:

Any Commissioner for Taking Oaths and Affidavits in Queensland, Australia:

You are hereby authorized and commissioned to take the deposition upon attached written interrogatories of A. A. Staines, Esq., Brisbane, Queen-land, Australia.

You will propound the questions to said witness, after he is by you duly sworn or affirmed to tell the truth, the whole truth and nothing but the truth and you will correctly record the answers of the witness to such questions. The witness shall subscribe the deposition in your presence. You will certify thereto and return the completed deposition to: Clerk U. S. District Court, Muskogee, Oklahoma, U. S. A.

You will attach to your certificate a certified or duly authenticated copy of your commission of appointment showing your authority to act as such Commissioner for the taking of Oaths and Affidavits.

Done at McAlester, in the Eastern District of Oklahoma, this the 3d day of September, 1942.

Geo. F. Clark,
Referee in Bankruptcy,
District Court of the United States of America, Eastern District of Oklahoma.

Clerk's Certificate.

I, John H. Pugh, do hereby certify that I am the duly and legally appointed, qualified and acting clerk of the United States District Court in and for the Eastern District of Oklahoma; that the above entitled cause was filed and is now pending in said court; that Geo. F. Clark is a duly qualified and acting referee in bankruptcy in and for said court and that the above entitled cause has been referred to and is pending before said Geo. F. Clark as such referee. I further certify that the signature of the said Geo. F. Clark

affixed to the attached and foregoing commission for the taking of depositions is the genuine signature of said Geo. F. Clark. I further certify that said referee in bankruptcy does not have a seal.

In witness whereof, I hereunto set my hand and official seal this the 11th day of September, 1942.

(Seal)

JOHN H. PUGH,
United States District Court
Clerk, Eastern District of Okla.

Interrogatories to Be Submitted to A. A. Staines

1. Interrogatory Number One: Will you please state your name, age, residence, business or occupation and how long you have been engaged in such business or occupation?

Answer: My name is Adolphus Arnold Staines; age 64 years; residence Liverpool Road, Clayfield, Brisbane, Queensland; occupation Under Secretary, Department of Mines of Queensland, which position I have held for approximately fourteen years.

2. Interrogatory Number Two: What connection, if any, did you have, either personally or on behalf of the government of the Commonwealth of Australia of the governments of Queensland or New South Wales, with the Panama-Pacific International Exposition held in San Francisco in the State of California, United States of America, in the year 1915? In this connection, if you state that you were connected with the Exposition, will you please state whether or not you attended the Exposition and if you did what your duties were and what part of the time you were there, where you spent that time and what you did while there.

Answer: I had no connection whatever with the said Exposition.

3. Interrogatory Number Three: Will you please state whether or not you have in your possession or custody or under your control the records or files of the Department of Mines of the government of Queensland showing the extent of the exhibit of gems, if any, made by the government of Queensland at the Panama-Pacific International Exposition held in San Francisco in 1915 and if you have such records or files, will you please state from such records or files what it discloses with reference to the extent and value of this exhibit.

Answer: I have under my control the records of the Department of Mines of the Government of Queensland showing the extent of said exhibit made by the said Government at said Exposition and they disclose the following as the extent and value of this exhibit:—Approximately 100 ozs. of Sapphires, approximately 6 ozs. of Zircon, 1½ lbs. of Corundum, 32 Sapphires and 8 Zircons of unstated weights, the total value of the whole exhibit being approximately £1,000.

4. Interrogatory Number Four: If it is possible for you to do so, will you please have a copy of the file from which you have made reference attached to this deposition as an exhibit and so identified by the person taking your deposition.

Answer: Now produced and shown to me and marked with the letter "A" is a true copy of all the entries relating to items referred to in the answer to Interrogatory Number Three which said entries appear in a book compiled by William Woodyatt Alder who was then an officer of the Department of Mines of Queensland and who collected the gems and rough stones comprised in the said exhibit of gems prepared for display at the said Exposition.

5. Interrogatory Number Five: Are you acquainted personally or otherwise with M. E. Heiser, also known as Morrie E. Heiser, and also known as Maurice Emanuel Heiser? If so state that you are acquainted with Mr. Heiser, will you please state how long you have known him and what has been the extent of your acquaintance with him?

Answer: I am not acquainted personally or otherwise

with M. E. Heiser, Morrie E. Heiser or Maurice Emanuel Heiser.

6. Interrogatory Number Six: Will you please state what the files and records of the Department of Mines in your office show, if anything, with reference to the connection of Mr. Heiser with the Panama-Pacific International Exposition at San Francisco, California, United States of America, in 1915, either as an individual or as a representative of your government?

Answer: The files and records of the Department of Mines in my office do not disclose that the said Mr. Heiser had any connection with the said Exposition either as an individual or as a representative of the Government of Queensland.

7. Interrogatory Number Seven: If your records do not show that Mr. Heiser had any connection with the Exposition either personally or as a representative of your government and if you have any personal knowledge as to whether or not he had any such connection, will you please state what that knowledge or information is.

Answer: I have no personal knowledge as to whether or not Mr. Heiser had any connection with the said Exposition.

8. Interrogatory Number Eight: Will you please state any further knowledge or information which may be disclosed by your files or which you may have personally with reference to the extent of the exhibit of either the governments of Queensland or New South Wales at said Exposition and the connection, if any, of M. E. Heiser with said exhibit at said Exposition?

Answer: There is no further knowledge or information which is disclosed by the files of the Department of Mines of Queensland or which I have personally as to the connection, if any, of M. E. Heiser with said exhibit at said Exposition.

A. A. STAINES.
(Signature of Witness.)

Commonwealth of Australia,
.....
.....

I, Henry Gillies, of Brisbane in the State of Queensland, Australia, a commissioner of affidavits of the Supreme Court of Queensland, having been duly commissioned by the United States District Court in and for the Eastern District of the State of Oklahoma, United States of America, to take the deposition of A. A. Staines of Brisbane, Queensland, Australia, upon written interrogatories do hereby certify that in pursuance of such commission I caused the said A. A. Staines to appear before me and did then and there administer to him an oath that his answer to such interrogatories would be the truth, the whole truth and nothing but the truth and the said A. A. Staines after having so been duly sworn did testify and did answer the interrogatories so propounded to him set forth in the foregoing interrogatories and answers and that the answers to said interrogatories were correctly recorded by me and are the true and correct answers of said A. A. Staines thereto.

I further certify that I am not interested in anywise in the event of this action and I am not an attorney for nor related to any of the parties connected therewith.

H. GILLIES.

I certify that I have not a seal. H. Gillies. 20 January, 1943.

A True Copy of All the Entries which appear in a Book forming part of the Records of the Department of Mines of the Government of Queensland compiled during the months of December 1914 and January 1915 by William Woodyatt Alder who was then an Officer of the Department of Mines of Queensland and who collected the gems and rough stones comprised in the exhibit of gems prepared for display by the Government of Queensland at the Panama-Pacific International Exposition held in San Francisco in the State of California, United States of America, in the year 1915:—

Levi Newsome, Sapphiretown.

No.	Crs.	Colour	Gem	Minimum Value
	Cut Gems			
1	4¼1/32	Yellow	Sapphire	20. 0. 0
2	5½⅛1/32	"	"	25. 0. 0
3	4½	"	"	13. 0. 0
4	2½⅛	"	"	7. 0. 0
5	2¼1/32	"	"	5. 0. 0
6	2½¼1/16	Green	"	6. 0. 0
7	6-1/16	"	"	12. 0. 0
8	5	"	"	10. 0. 0
9	23½⅛	Yellow	" (Lady Denman)	240. 0. 0
10	5¾	"	Sapphire	21. 0. 0
11	2¾⅛	"	"	15. 0. 0
12	5½⅛	"	"	17. 0. 0
13	3½⅛	"	"	10. 0. 0
14	3	"	"	9. 0. 0
15	6¼⅛	Green	"	12. 0. 0
16	3½1/16	Orange Green	"	8. 0. 0
17	2¾⅛	" "	"	4. 0. 0
18	2	Yellow	"	6. 0. 0
19	3¾⅛	Parti-colour	"	6. 0. 0

(sgd.) LEVI NEWSOME.

Levi Newsome, Sapphiretown.

Rough Stones

No.	Crs.	Colour	Gem	Minimum Value
1	123½	Green	Sapphires	62. 0. 0
2	89½	"	"	45. 0. 0
3	59¼⅛	"	"	30. 0. 0
4	50¼⅛	"	"	25. 0. 0
5	41½¼	"	"	20. 0. 0
6	34½¼⅛	"	"	17. 0. 0
7	33½¼	"	"	16. 0. 0
8	27½⅛	"	"	14. 0. 0
9	31¼	"	"	15. 0. 0
10	26½⅛	"	"	13. 0. 0
11	6 ozs.		Zircons	3. 0. 0
12	5 ozs.		Machine Stones	1.10. 0

(sgd.) LEVI NEWSOME.

In the United States District Court in and for the Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. In Bankruptcy No. 7623.

This is the First Sheet of the true copy of all entries in a book forming part of the records of the Department of Mines of the Government of Queensland compiled during the months of December 1914 and January 1915 by William Woodyatt Alder who was then an Officer of the Department of Mines of Queensland now produced to me at the time of swearing to the answers to the interrogatories herein.

Sworn before me at Brisbane in the State of Queensland in the Commonwealth of Australia this twentieth day of January One thousand nine hundred and forty-three.

A. A. STAINES.
Deponent.

H. GILLIES, Commissioner for Affidavits.

J. S. Nisbet, Sapphiretown.

	Minimum Value
34 Green Sapphires (Cut) (To be sold in one lot only)	£12. 0. 0

(sgd.) J. STEWART NISBET.

Small parcel of small corundum (under ½ lb.)
Buyers could be supplied @ 2 — per lb.

V. Bambrick—Sapphiretown.

	Minimum Value
One Sapphire, (Yellow—Cut) Said to weigh 7½ carats	£25. 0. 0

(sgd.) V. BAMBRICK.

J. G. Cousen—Sapphiretown.

	Minimum Value
(1) One Green Sapphire (Cut) Said to contain 9 carats	£10. 0. 0
(2) 4 ozs. 6 dwts. Blue Sapphires (Rough) @ £2 per oz.	£8.12. 0
(3) 12 ozs. Small Blue Sapphires (Rough) @ 10/—per oz.	£6. 0. 0
(4) 10 ozs. Sapphires (Machine Stones) for Mechanical purposes) @ 5/— per oz.	£2.10. 0

Wm. Holland—Sapphiretown.

	Minimum Price
(1) Red Zircon (Said to contain 7 carats)	£4. 0. 0
(2) Green Sapphire (said to contain 7½ carats)	£10. 6. 0

(sgd.) J. STEWART NISBET.

Wm. Moran—Sapphiretown.

	Minimum Price
(1) One oz. Blue Sapphires (Rough) @ £2 per oz.	£2. 0. 0
(2) One oz. Small Blue Sapphires (Rough)	12. 0
(3) 2¼ ozs. Machine Stones @ 6/—p. oz.	6. 0
	13. 6

(sgd.) WILLIAM MORAN.

In the United States District Court in and for the Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. In Bankruptcy No. 7623.

This is the Second Sheet of the true copy of all entries in a book forming part of the records of the Department of Mines of the Government of Queensland compiled during the months of December, 1914 and January 1915 by William

Woodyatt Alder who was then an Officer of the Department of Mines of Queensland now produced to me at the time of swearing to the answers to the interrogatories herein.

Sworn before me at Brisbane in the State of Queensland in the Commonwealth of Australia this twentieth day of January One thousand nine hundred and forty-three.

A. A. Stainis, Deponent.

H. Gillies, Commissioner for Affidavits.

E. Burford—Sapphiretown.

	Minimum Value
(1) 5 ozs. Blue Sapphires (Rough) @ 1/15/— per oz.	£8.15. 0
(2) 6 Blue Sapphires (Cut)—About 9 carats. @ 12/6 per carat	5:12. 6

(sgd.) E. Burford.

Horace Bambrick—Sapphiretown.

	Minimum Value
One large Green Sapphire (Rough)	£8. 0. 0

(sgd.) E. Burford.

David Shephard—Sapphiretown.

	Minimum Value
(1) Large Green Sapphire (Cut). Said to contain 5½ carats	£3. 0. 0
(2) Alexanderite (Cut)	£1.10. 0
(3) One Blue & 2 Yellow Sapphires (Cut). (Set of 3 stones)	£2. 0. 0
(4) Six Fancy Sapphires (Cut) (Said to contain 8¼ carats @ £1 each.	£6. 0. 0
(5) One Large Zircon (Rough)	£5. 0. 0

(sgd.) D. Shephard.

A. A. Holland—Rubyvale.

5 ozs. Blue Sapphires (Rough) @ £3 per oz.	£15. 0. 0

(sgd.) A. A. Holland.

David Emonson, Rubyvale.

	Minimum Value
Parcel of Rough Blue Sapphires containing 5 ozs. @ £3 per oz.	£15. 0. 0

(sgd.) DAVID EMONSON.

Owen McIntyre, Norah A. Flynn, Rubyvale

	Minimum Value
Parcel of Rough Blue Sapphires containing 9 ozs. @ £3 p. oz.	£27. 0. 0

(sgd.) D. EMONSON for McIntyre and Flynn

In the United States District Court in and for the Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. In Bankruptcy No. 7623.

This is the Third Sheet of the true copy of all entries in a book forming part of the records of the Department of Mines of the Government of Queensland compiled during the months of December 1914 and January 1915 by William Woodyatt Alder who was then an Officer of the Department of Mines of Queensland now produced to me at the time of swearing to the answers to the interrogatories herein.

Sworn before me at Brisbane in the State of Queensland in the Commonwealth of Australia this twentieth day of January One thousand nine hundred and forty-three.

A. A. STAINES, Deponent.

H. GILLIES, Commissioner for Affidavits.

G. W. S. Roche—Rubyvale.

	Minimum Value
5 pieces Corundum	
(1 piece 6 ozs. @ 12 —p.oz.	£3.12. 0
(4 pieces each over 1 oz. @ 8 —p.oz.	2.12. 0
Totall weight 12½ ozs.	

This parcel is forwarded, not necessarily for sale, but prin

cipally to ascertain if any buyer requires the stone in quantity and at what price prepared to pay.

(sgd.) G. W. S. ROCHE.

C. W. Chick—Sapphiretown.

	Minimum Value
(1) Parcel of Rough Blue Sapphires Said to contain 5 ozs. @ £3 per oz	£15. 0. 0
(2) Parcel of Rough Blue Sapphires (Small stones). Said to contain 3 ozs.—@ 12s/—d.p.oz.	£1.16. 0
(3) Parcel of Machine Stones said to contain 5 ozs. @ 7/— per oz.	£1.15. 0

(sgd.) C. W. CHICK.

Thomas Holland, Sapphiretown.

Parcel of Rough Blue Sapphires said to contain 5 ozs. @ £3 per oz.	£15. 0. 0

(sgd.) J. STEWART NISBET.

James Peterson, Sapphiretown.

(1) 3 Green Sapphires (Cut)	£2. 0. 0
(2) 1 Large Blue " "	4. 0. 0
(3) 3 Light Blue " "	7. 0. 0
(4) 3 Yellow " "	12.10. 0
(5) 3 Parti-colour " "	10. 0. 0
(6) 3 Yellow " "	12.10. 0
(7) 3 Green " "	4.10. 0
(8) 3 Large Blue " "	9. 0. 0
(9) 3 Parti-colour " "	6.10. 0
(10) 1 Large " "	5. 0. 0
(11) 8 Zircons "	13. 0. 0
	£86. 0. 0

Received by post from Mr. J. S. Nisbet.

(init.) W. A.

In the United States District Court in and for the Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. In Bankruptcy No. 7623.

This is the fourth and last sheet of the true copy of all entries in a book forming part of the records of the Department of Mines of the Government of Queensland compiled during the months of December 1914 and January 1915 by William Woodyatt Alder who was then an Officer of the Department of Mines of Queensland now produced to me at the time of swearing to the answers to the interrogatories herein.

Sworn before me at Brisbane in the State of Queensland in the Commonwealth of Australia this twentieth day of January One thousand nine hundred and forty-three.

A. A. STAINES, Deponent.

H. GILLIES, Commissioner for Affidavits.

Commonwealth of Australia, State of Queensland, City of Brisbane, Consulate of the United States of America, ss:

I, Joseph P. Ragland, Consul of the United States of America at Brisbane, in the State of Queensland, Commonwealth of Australia, duly commissioned and qualified, do hereby certify that Henry Gillies, whose true signature is affixed to each page of the attached interrogatories and exhibits, was on the twentieth day of January, 1943, the day of the date thereof, a Commissioner of the Supreme Court of Queensland for taking affidavits, and Commissioner for Affidavits, at Brisbane, Queensland, Australia, duly appointed and qualified, to whose official acts faith and credit are due. I do further certify that the said Henry Gillies in his capacity as Commissioner of the Supreme Court of Queensland for taking affidavits, and as Commissioner for Affidavits, does not have an official seal.

For the contents of the annexed instrument the Consulate assumes no responsibility.

In Witness Whereof I have hereunto subscribed my name and affixed the seal of the Consulate of the United States of America, at Brisbane, Australia, this twenty-first day of January, 1943, A. D.

JOSEPH P. RAGLAND,
Consul of the United States of America.

(Seal)

Service No. 44. Fee $2.00—12s.8d.

($2.00 American Foreign Service Stamp Attached.)

(Filed March 15, 1943. John H. Pugh, Clerk, U. S. District Court. By W. P. W., Deputy Clerk.

Commission for the Taking of Depositions.

The United States of America to: Any Commissioner for Taking Oaths and Affidavits in New South Wales, Australia:

You are hereby authorized and commissioned to take the deposition upon attached written interrogatories of Leo J. Jones, Esq., New South Wales, Australia.

You will propound the questions to said witness, after he is by you duly sworn or affirmed to tell the truth, the whole truth and nothing but the truth and you will correctly record the answers of the witness to such questions. The witness shall subscribe the deposition in your presence. You will certify thereto and return the completed deposition to: Clerk U. S. District Court, Muskogee, Oklahoma, U.S.A.

You will attach to your certificate a certified or duly authenticated copy of your commission or appointment showing your authority to act as such Commissioner for the taking of Oaths and Affidavits.

Done at McAlester, in the Eastern District of Oklahoma, this the 3d day of September, 1942.

GEO. F. CLARK,
Referee in Bankruptcy,
District Court of the United States of America, Eastern District of Oklahoma.

Clerk's Certificate.

I, John H. Pugh, do hereby certify that I am the duly and legally appointed, qualified and acting clerk of the United States District Court in and for the Eastern District of Oklahoma; that the above entitled cause was filed and is now pending in said court; that Geo. F. Clark is a duly qualified and acting referee in bankruptcy in and for said court and that the above entitled cause has been referred to and is pending before said Geo. F. Clark as such referee. I further certify that the signature of the said Geo. F. Clark affixed to the attached and foregoing commission for the taking of depositions is the genuine signature of said Geo. F. Clark. I further certify that said referee in bankruptcy does not have a seal.

In witness whereof, I hereunto set my hand and official seal this the 11th day of September, 1942.

(Seal) JOHN H. PUGH,
United States District Court
Clerk, Eastern District of Oklahoma.

Interrogatories to Be Submitted to Leo J. Jones.

1. Interrogatory Number One: Will you please state your name, age, residence, business or occupation and how long you have been engaged in such business or occupation?

Answer: My name is Leo Joseph Jones, age 59 years; Residence "Sunnyside" Edgecombe Avenue, Coogee, New South Wales, Australia. Occupation: Government Geologist of New South Wales. Engaged as professional officer of the New South Wales Mines Department for the past 42 years.

LEO. J. JONES.

2. Interrogatory Number Two: What connection, if any, did you have, either personally or on behalf of the government of the Commonwealth of Australia of the governments of Queensland or New South Wales, with the Panama-Pacific International Exposition held in San Francisco, in the State of California, United States of America, in the year

1915? In this connection, if you state that you were connected with the Exposition, will you please state whether or not you attended the Exposition and if you did what your duties were and what part of the time you were there, where you spent that time and what you did while there.

Answer: I was a representative of the State Government of New South Wales at the Panama-Pacific International Exposition held at San Francisco in 1915. I acted as Officer-in-Charge of the New South Wales Mineral Exhibit. I was in daily attendance in the Australian Pavilion throughout the whole period of the Exposition. My duties were to advise and lecture on Australian mineral resources and mining matters generally. It was my duty each night to place in a safe the gem-stones and gold exhibits of New South Wales and each morning to display these exhibits.

LEO J. JONES.

3. Interrogatory Number Three: Please give the names, if you can, of others who represented either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales at said Exposition and particularly with reference to the mineral and gem exhibits.

Answer: See Statement No. 3 herewith.

LEO J. JONES.

4. Interrogatory Number Four: Are you acquainted with M. E. Heiser, also known as Morrie E. Heiser and also known as Maurice E. Heiser and if you state that you are acquainted with Mr. Heiser, will you please state how long you have known him and what has been the extent of your acquaintance with him?

Answer: I met Mr. M. E. Heiser after he had obtained the permission of the Australian Commission to operate a small lapidist's bench in the Australian Pavilion. My acquaintance with Mr. Heiser was possibly of one week's duration.

LEO J. JONES.

5. Interrogatory Number Five: Will you please state whether or not you were acquainted with the exhibits of the Commonwealth of Australia and the governments of Queens-

land and New South Wales at the Panama-Pacific International Exposition? If you say you were acquainted with such exhibits, will you please state whether or not such governments exhibited at said Exposition sapphires, opals, zircons, and other minerals and the extent of such exhibits at such Exposition, together with the building or buildings in which such exhibits were housed, if you recall?

Answer: Yes. I was acquainted with all the exhibits displayed in the Australian Pavilion: Each of the State Governments of New South Wales and Queensland displayed gemstones (sapphires, opals, zircons, etc.) and other minerals in the Australian Pavilion. (See also answer to Interrogation Number Ten.) LEO J. JONES.

6. Interrogatory Number Six: Will you please state whether or not Mr. M. E. Heiser had any connection with said Exposition as a representative of either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales:

Answer: Mr. M. E. Heiser was not connected with said Exposition as a representative of either the Government of the Commonwealth of Australia or the Governments of Queensland and New South Wales. LEO J. JONES.

Answer. Statement Number Three.

The following were to the best of my belief, the only accredited Australian officials at the Exposition:

Commonwealth representatives: Hon. Alfred Deakin, Chairman of Commission; N. Neilsen (New South Wales Commissioner); —— Friche, (Victorian Commissioner); D. Edward, Secretary of Commission, later this position was filled by Mr. Orton.

New South Wales Government representatives: L. J. Jones (Mineral Exhibit), New South Wales; J. Neitsigh, (Exhibits of New South Wales other than Minerals).

Victorian Government representative—C. Harrison (All Victorian Exhibits).

Queensland Government representatives: —— Campbell,

—— Mosby, in charge of Queensland exhibits including minerals and gemstones from that State. LEO J. JONES.

7. Interrogatory Number Seven: Will you please state whether or not Mr. Heiser had an exhibit or display of his own at the Exposition and if so, the extent and size of the exhibit or display according to your best knowledge and recollection and the place where it was housed. Also the length of time the exhibit was maintained by Mr. Heiser and whether or not he maintained the same during the course of the entire Exposition.

Answer: Mr. Heiser received the permission of the Australian Commissioners to erect and operate a lapidist's bench within the Mineral Court of the Australian Pavilion. The space occupied was approximately 8 ft. by 4 ft. At this bench Mr. Heiser gave demonstrations of cutting and polishing opals. Mr. Heiser's display continued for a period of about one week's duration. LEO J. JONES.

8. Interrogatory Number Eight: If you state that Mr. Heiser had an exhibit or display of his own at the Exposition and that the same was not maintained during the entire course thereof, will you please state, if you know, why the same was not maintained by Mr. Heiser until the Exposition closed?

Answer: One of the conditions of Mr. Heiser's tenancy at the Australian Pavilion was that no articles were to be sold by him therein.

As Mr. Heiser persisted in selling at his bench gemstones (chiefly rough potch opal) the Australian Commissioners withdrew his permit to exhibit within the Australian Pavilion. LEO J. JONES.

9. Interrogatory Number Nine: If you state that Mr. Heiser had a display or exhibit at the Exposition, will you please state the names of some of the others who had exhibits in the same building and at the same time as Mr. Heiser had his display or exhibit.

Answer: See Statement Number Nine herewith.

LEO J. JONES.

10. Interrogatory Number Ten: If you state that either the government of the Commonwealth of Australia or the governments of Queensland or New South Wales had either a mineral or gem exhibit at the Exposition, will you please state, if you know, who was in charge of the exhibits and the extent of the exhibits, if you know.

Answer: See Statement Number Ten herewith.

LEO J. JONES.

11. Interrogatory Number Eleven: Will you please state any further knowledge or information which you may have with reference to Mr. Heiser's connection, if any, with the Exposition as a representative of your government or as an individual exhibitor?

Answer: My recollections of Mr. Heiser are that he was a gemstone dealer operating chiefly with rough opal and sapphires obtained from Queensland. I understood that he brought personally from Australia to San Francisco some rough and polished opals and also sapphires, but what quantities he possessed I have no knowledge.

His lapidary exhibition during the short period in which he operated proved of considerable interest and attracted a large number of visitors.

See also answers to Interrogations Numbers Six, Seven and Eight. LEO J. JONES.

Answer. Statement Number Nine.

There were many exhibitors represented in the Australian Pavilion during the currency of Mr. Heiser's display, but in every case these exhibits were under the sole control of the Government representatives of the State in which their operations were conducted. For example, Mr. P. Marks of Sydney had a large exhibit of gemstones, Messrs. Walther and Stevenson an exhibit of hides and leather goods, Messrs. Tost and Robu an exhibit of aboriginal weapons, carvings, etc. These exhibits remained "in Bond" under the supervision of a United States Customs official during the currency of the Exposition. Many of the Mining Companies of New South Wales were represented in the general mining exhibit of the State. LEO J. JONES.

Answer. Statement Number Ten.

(a) Mineral Exhibits.

The New South Wales Government had a large exhibit representative of most of the commercial ores of the State, together with refined metals—Copper, Tin, Lead, Spelter, etc.

These exhibits were displayed on several large trophy stands and in glass cases, they were entirely under my control.

The Queensland Government had a very small mineral exhibit comprising ores of gold, copper, tin and silver-lead. These were displayed on a small single trophy stand and were under the control of the Queensland Government representatives, Messrs. Campbell and Mobsby.

(b) Gemstones (Precious and semi-precious).

The New South Wales Government had an extensive display of gemstones, in the rough, polished and cut, comprising Opals, Diamonds, Emeralds, Topaz, Amethyst, Beryl, Tourmaline, Sapphires, Turquoise, Zircons, Garnets and Pearls. (This exhibit was owned by the late Percy Marks, Jeweller, Sydney and displayed under the supervision of myself—State Representative).

This exhibit was displayed in the five glass cases marked "M" on attached photograph.

The Queensland Government had a small display of gemstones, chiefly Sapphires (cut and in the rough) Zircons (cut), Opals (cut and in the rough), and manufactured *jewellery*. These exhibits were displayed in the two glass cases indicated by the letter "Q" on the attached photograph taken within the Australian Pavilion, and were under the control of Messrs. Campbell and Mobsby (Queensland Government representatives).

LEO J. JONES.

12. Interrogatory Twelve. Will you please state whether or not the governments of Queensland or New South Wales or the government of the Commonwealth of Australia shipped any sapphires, zircons or opals from Australia to San Francisco, which sapphires, zircons and opals were the property of M. E. Heiser and which were exhibited at said Exposition in 1915 by said governments or either of them?

Answer: I know of no Sapphires, Zircons or Opals shipped on behalf of Mr. M. E. Heiser from Australia to San Francisco by the Government of the Commonwealth of Australia or the Governments of Queensland, or New South Wales which were subsequently exhibited at said Exposition in 1915. LEO J. JONES.

13. Interrogatory Number Thirteen: Will you please state, if you know, whether or not said M. E. Heiser had a commission either by letter or other government document to represent either the government of the commonwealth of Australia or the governments of Queensland or New South Wales, or either of them, at said Exposition?

Answer: Other than the permission (possibly given in writing) given by the Australian Commissioners in San Francisco for Mr. Heiser to exhibit and operate a lapidist's bench in the Australian Pavilion, I know of no commission either by letter or other Government document to represent either the Government of the Commonwealth of Australia or the Governments of Queensland or New South Wales having been issued to Mr. Heiser.

LEO. J. JONES,
(Signature of Witness)

Commonwealth of Australia, State of New South Wales, Sydney, to-wit:

I, Clifford Philip Dignam of 160 Castlereagh Street, Sydney, in the State of New South Wales, Commissioner for Affidavits, having been duly commissioned by the United States District Court in and for the Eastern District of the State of Oklahoma, United States of America, to take the deposition of Leo J. Jones of New South Wales, Australia, upon written interrogatories, do hereby certify that in pursuance of such commission I caused the said Leo J. Jones to appear before me and did then and there administer to him an oath that his answer to such interrogatories would be the truth, the whole truth and nothing but the truth and the said Leo J. Jones after having so been duly sworn did testify and did answer the interrogatories so propounded to him as set forth in the foregoing interrogatories and answers and that the answers to said interrogatories were correctly re-

corded by me and are the true and correct answers of said Leo F. Jones thereto.

I further certify that I am not interested in any way in the event of this action and I am not an attorney for nor related to any of the parties connected therewith.

C. P. DIGNAM.

(Seal) I certify that I have not a seal.

C. P. DIGNAM.

The Chief Justice
Sydney.

I the Honourable Philip Whistler Street, Chief Justice of the Supreme Court of New South Wales, by virtue of the Oaths Act 1900, and ~~all~~ of all other powers enabling me in this behalf Do by these presents appoint Clifford Philip Dignam of Sydney to be a Commissioner of the said Supreme Court to take and receive affidavits concerning any matter within the jurisdiction of any Court so long as he shall continue to reside at the place above named or until this appointment be cancelled.

Given under my hand and the Seal of the Supreme Court of New South Wales this eighteenth day of May in the year one thousand nine hundred and twenty-six.

P. W. STREET, Chief Justice.

Seal of the Supreme Court of New South Wales.

I, Clifford Philip Dignam of Sydney aforesaid, hereby certify that I am identical with the person named above and that the above is a true copy of the original Commission of which it purports to be copy the same having been compared therewith by me.

Dated at Sydney this thirteenth day of January, 1943.

C. P. DIGNAM.

Filed March 15, 1943. John H. Pugh, Clerk U. S. District Court. By W. P. W., Deputy Clerk.

Photograph of Gold and Gemstone Display in the Australian Pavilion, Panama-Pacific International Exposition, San Francisco 1915. (see also portions of mineral trophy stands).

...is the photograph referred to in answer to Interrogation ...or Ten, and marked "P" and "Q".

Objectors Exhibit CC.

Reporter's Transcript of Arguments on Motion to Vacate Judgment and Set Aside Default.

In the District Court of the United States for the Southern District of California, Central Division.

Hon. George Cosgrave, Judge Presiding.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, Defendant. No. 7256-C-Law.

Appearances: Leonard J. Meyberg, Esq. For Plaintiff. Cobb, Campbell & Kelley, By Francis B. Cobb, Esq. For Defendant Leonard Woodruff and P. M. Jackson, Trustee in Bankruptcy.

Los Angeles, California, Tuesday, September 26, 1939. 2 P. M.

Mr. Turnbull: With the permission of counsel, I will state that I am one of the attorneys for the petitioning creditors in the bankruptcy case. May I have it stated whether these proceedings are in the bankruptcy case or in Heiser vs. Woodruff? I am not interested in any way, except on behalf of the petitioning creditors in the bankruptcy proceeding.

The Court: The court's understanding is that these proceedings are in the case of Heiser vs. Woodruff.

Mr. Cobb: Mr. Turnbull appeared for the trustee in bankruptcy in the Oklahoma proceeding. Mr. Turnbull has filed an inventory out here. There has not been any determination yet as to which court is going to try the matter.

Your Honor will recall, the first point made under my points and authorities, which I briefly touched on, on the last occasion, was that this action was filed in 1935. Summons was issued July 11th, and delivered to the United States Marshal. Thereafter, summons was returned, which return by the marshal shows that he had not served the same, and a new summons was issued in April, 1937. The new summons, as your Honor will note from the file, complied with the law *is* it then existed. This court, and the courts of these United States, were acting under the con-

formity act. In other words, the summons had to be served in an action at law in the District Court the same as it would have had to have been served in the State court if the action had been brought there, and that required personal service. After the alias summons had been issued, 1937, Congress enacted an act, giving the Supreme Court power to adopt the Federal Rules of Procedure, and after considerable delay those rules became effective in September, 1938. The Congressional act, in which those rules were adopted, provided:

"Be it enacted * * * That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the District Courts of the United States. * * * Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant."

On January 25, 1939, pursuant to application made to Judge Yankwich, of this court, an order was entered providing that E. M. Daniels should serve the summons and complaint in this case, in lieu of the United States Marshal. The return on which the default has been entered in this case shows that service was not made by Mr. E. M. Daniels pursuant to Judge Yankwich's order, but by the United States Marshal.

Now, in that connection, we contend, first, that this summons was outstanding before the Rules of Civil Procedure became effective, and that process could not be served except in the manner and as provided by law which was in existence at the time summons was issued. Your Honor will note that under Rule 4 of the new Rules of Civil Procedure, it provides for a form of summons, and that summons, under the new rule, is different from the summons served in this case.

The Court: What is the summons under the rule?

Mr. Cobb: Rule 4, subdivision (b). And in that connection the principal departure of the summons in this case is that it does not contain in the body of it this language:

"the time within which these rules require the defendant to appear and defend, and shall notify him that in case of

his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint."

And further, that it shall be directed to the defendant, and state the name and address of the plaintiff's attorney.

In the first place, it made no reference to the Federal Rules of Civil Procedure. It also did not contain the name and address of plaintiff's attorney.

Your Honor will note that the form of this summons which I have before me, under the Federal Rules of Civil Procedure, in compliance with this rule, sets up the name of the plaintiff's attorney, or the plaintiff and his address, or requires the defendant to file his answer and to serve a copy upon plaintiff's attorney, and it must notify him also that he must defend or appear in accordance with the law and the Rules of Civil Procedure. That was absent in this case.

The Court: I don't know that I grasp that. You say it must contain notice that he must appear and defend in accordance with the rules of—.

Mr. Cobb: Civil Procedure.

The Court: (Reading): "The summons shall be signed by the Clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend."

You think there should be a reference to the rules?

Mr. Cobb: Yes, your Honor, or a statement of the time that he has to appear in accordance with the rules.

The Court: I suppose that is in the summons, isn't it?

Mr. Cobb: The summons here provides that in 20 days he must appear and answer—within 20 days, but it did contain no reference to plaintiff's attorney, except that his name was on the back of the summons—the original as filed here. I would like to present to you the form shown as Form 1. Summons—which reads:

"To the above-named defendant.

"You are hereby summoned and required to serve upon ....., plaintiff's attorney, whose address is ..... an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

"This summons is issued pursuant to Rule + of the Federal Rules of Civil Procedure

"(Seal of the U. S. District Court. Dated .....)"

If your Honor will examine the summons in this file it is issued under the attest of this court, and it doesn't require him to file a copy of his complaint on plaintiff's attorney or show plaintiff's attorney's name and address except as it can be obtained from looking at the back of the complaint.

As I say, your Honor, that shows the fallacy of allowing plaintiff to proceed on the service under these federal rules by not complying with the form of the rules under the form of process.

It is my argument that this action, having been commenced before the rules were adopted, he should have personally served summons in accordance with the law then in effect, or if your Honor differs with me on that, he should have had summons pursuant to these rules and have served it in accordance with these rules. Following that same rule, subdivision (c), it says:

"By whom served. The service of all process shall be made by a United States Marshal, by his deputy, or by some person specially appointed by the court for that purpose."

It says "or"; it does not say both of them can serve it. In this case Mr. Daniels was designated to be the person to serve it. The Supreme Court, under the language, did not allow both parties to serve it. It says, "or by some person specially appointed by the court", and Mr. Daniels didn't serve it.

I also have submitted in my points and authorities several cases in which the wrong marshal made the service. These cases arose where two districts were near each other, and there was one case, I believe, where the marshal was away on his vacation and the other marshal administered his duties, and the court set aside a judgment for the reason that—quoting from the language of the court:

"If the marshal is commanded by the writ to serve it, no other person may perform that duty."

We submit that language can be paraphrased to say if Mr. Daniels was designated by the court to serve the writ, no other person or marshal should serve it. The court, following the question of jurisdiction, has always held that the form of process and service of it being the manner by which the court acquires jurisdiction of the person or parties strictly construed requires that the requirements of the law be examined in every instance, because it will lead to a great deal of trouble and confusion if we have different forms of process by different persons other than those authorized by law to serve it.

Proceeding with my second point, that the judgment was prematurely entered, in that the complaint was based upon a judgment liability upon an alleged conspiracy, in that judgment was entered against one defendant prior to the trial of the issues with respect to the other defendants.

The court will note from the file that one Calvin Smith and Leonard Woodruff were charged with a conspiracy which had for its object to defraud plaintiff of certain uncut stones. From the allegations of the complaint it appears that this fraud arose out of a conspiracy; in other words, Mr. Woodruff alone did not perform all of the acts charged, nor did Mr. Smith, but by the joint charges of what one didn't do and the other one did, and it was a conspiracy with them, and a charge of fraud arose out of a conspiracy. We submit that this is a joint liability, and under the law as stated in Hill v. Lansing, 91 U.S. 160, Moore's Federal Practice, Vol. 3, Section 3169,—these points are all set forth in my brief—the rule is stated:

"The common law rule that prevails in this state as in

a majority of the states is that in a joint action judgment must be against all the defendants or against none of them. Formerly Section 19, C. 177, allowing judgment against less than all the joint contractors does not apply where one of the defendants alone files a consent which is not personal, but goes to plaintiff's right of recovery against all defendants. It follows the notice of motion for judgment should be quashed as to both defendants."

In this case Mr. Smith's answer is still on file, and the action is going to have to proceed to trial as against him. We have in this state the rule in respect to conspiracy. In other words, you can't prove it by the action of one party; it has to be a joint action. I submit in this case the default judgment was premature, while the answer of Mr. Smith requires the case to be tried on its merits.

The additional ground I desire to submit is that the complaint did not state a cause of action.

A motion to vacate a default judgment, pursuant to Section 473 of our California Code of Civil Procedure, which code section has been adopted by the Supreme Court and embodied in Rule 60 (b) of the new Rules of Federal Procedure, provides that a party, within six months, or his legal representative, may move the court to set aside a default judgment. The courts have held that this is a direct attack upon the judgment, and not a collateral attack.

Your Honor, I believe at the last hearing, asked me if the judgment was void, and I told your Honor it was not void as against collateral attack, but on a direct attack, which is in the nature of a review and a special proceeding to reach the judgment, the courts have held that if the complaint does not state a cause of action the court should grant the motion.

In this connection I have cited and quoted from numerous cases, and I can summarize the cases, I think, in the language of

Wood v. Carpenter, 101 U.S. 135.

The language of the Supreme Court in that case has been quoted in practically every case in this state, and

every other state, on the question of what is necessary to allege to state a cause of action for fraud, where the action is brought after the expiration of the three-year period.

We go back in that connection to the pleadings required in respect to fraud. In this complaint it is alleged merely that plaintiff was defrauded by Woodruff and Smith, and that's all it said, that he was defrauded; there would be no question but what it did not state a cause of action, because the courts have been strict in requiring allegations of fraud to be made specific and certain, and the Supreme Court of the United States extended that doctrine, as it is now universally adopted, that where you bring an action after the expiration of the three-year period you not only have to allege the same elements constituting the fraud, but you have to go beyond that and allege, where you do not specify it within the three-year period, by setting up the facts, so the court can determine from your complaint whether you have been guilty of laches, or whether you are excused from not having discovered it sooner. This case of Wood v. Carpenter provides that:

"In this class of cases plaintiff is held to stringent rules of pleading and evidence, and especially must there be distinct averments as to the time when the fraud, mistake, concealments, or misrepresentations were discovered, and what the discovery is, so that the court may clearly see whether, by ordinary diligence the discovery might not have been before made. A general allegation of ignorance at one time and of knowledge at another is of no effect. If the plaintiff made any particular discovery, it should be stated when it was made, what it was, how it was made, and why it was not made sooner."

This complaint is totally lacking in that respect. The only point is that they allege they discovered this fraud a short time before—I think back in '32, and even its discovery there would still be beyond the three years, if it had not been alleged that defendant on information and belief believes he was out of the state for the three years, in order to bring it within three years from his discovery.

Under the allegations of the complaint he did not only wait within three months of three years to bring the action,

but he did not allege any fact as to why he did not discover it sooner. The alleged fraud was consummated by an execution sale made in the Supreme Court, which was a matter of public record, and he states he was without the state and traveling around during a portion of this time. In that connection I find a case, almost squarely in point, except that the man was in the federal penitentiary instead of traveling in Europe. The charges of fraud were matters of record, and the court said in those cases—Woolcott v. Carpenter; Lady Washington v. Wood—that he was not excused, and his attempt to allege excuse did not state a cause of action in those cases.

"In the instant case the allegations to the effect that plaintiff did not discover the alleged fraud until immediately after he had been examined in the state penitentiary is insufficient under the rule of the authorities cited. No facts nor circumstances leading to the alleged discovery at that time are pleaded.

Here there is no allegation in this complaint showing how he made the discovery, and I have an affidavit here which I am going to ask to file at a later date showing that it is sworn testimony given before the Corporation Commissioner, when Mr. Heiser applied for his license there; I have a transcript of the testimony, some three volumes, and it shows that in 1930 and 1931 Mr. Heiser was back here, and he and Mr. Smith went to Houston, Texas, to try to make another sale and it just goes to show if he went to trial in this case on its merits, your Honor, there is no fear in my mind but what the entire matter could be defeated, not only on its merits but on the statute of limitations and the alleged fraud. The huge chance of having Mr. Heiser allege under oath that he did not discover these facts; how he could discover them, and so forth, would have prevented him from filing this complaint. That is the importance, in filing a fraud action charging the person with fraud, in not meeting the requirements set forth under the cases by our courts. I have analyzed the complaint, I have prepared a written analysis of it, and it is totally lacking in that essential element; and the authorities on every case provide that that is an essential element to be pleaded, otherwise the complaint does not state a cause of action.

The next point I make is that the complaint does not state a cause of action for conversion, for the reason that it is alleged in the complaint that Mr. Heuser deposited these items given to a bank and gave Mr. Smith access to them; that if Mr. Smith sold any of the items he was to account to him for the sales, and it is also alleged that these items are property. He doesn't say, of course, he says that plaintiff's property was transferred to the Golden State Item Company of Nevada. They claim that was on certain conditions, and that those conditions were not met, but anyway it was transferred.

If the corporation owned the property, or if Mr. Smith was given the right to take the property and sell it an action for conversion is not the proper remedy. The last court said in Thompson v. Valve City Motors, 4 Cal. App. 2d 611, 639, a very late case:

"Where the right or authority is given to sell personal property for another, a conversion of the property does not result from the failure to pay over the proceeds and an action in conversion is not the proper remedy."

And also further cases, which state that an action for a conversion will not lie unless the ownership of the property and the right of possession of the goods are in the plaintiff. I have several cases cited in support of that rule.

If Mr. Heuser transfers this property to the Golden State Item Company of Nevada—and again I have this transcript here with sworn testimony that he did so, that he was secretary of the company that he received stock for it—if he transferred it to that corporation he has not the right to maintain an action for conversion. Only the corporation can, because the corporation would be the one entitled to the possession and ownership of the property. It be transferred from the corporation, so that property would be back in him he could maintain the action, but there is no [illegible] Mr. Heuser.

Now we come to another point which has not to do with question of the entry of the judgment, of the [illegible] $100,000 allowed for interest.

In this case interest was allowed from the date of the alleged execution sale, the 13th of May, 1929. On an action for conversion, if Mr. Smith had owned the property, or the Golden State Gem Company did, and your Honor differs from me on my premise, it is still necessary for Mr. Heiser to demand that this merchandise be turned over to him before he is entitled to interest. In other words, he can't have conversion until somebody refuses to turn over the property, or the property has been destroyed, or something of that character. In this case he alleged he made demand. It has been denied, but he does not say when. If he alleged it was 1929 he is barred by the statute, in that it would be inconsistent, because he did not allege the loss or discovery of the fact until 1932. He could have made demand for the return of this merchandise in 1929, without knowing the facts, and if he did he was out, under the cases I have just cited, and if he did make the demand in '32—and again I say he does not allege the date—he can only recover interest from the time he made the demand for the return of the property.

And another point, your Honor, is that this complaint consists of three counts. The defaulted judgment does not relate to any one count. The first count is for a conspiracy and a fraudulent conversion; the second is an attempt to plead the loss of certain mining stock, and other matters, and the third is for damages he is alleged to have sustained, and he incorporates by reference a portion of the previous cause of action.

In this case, your Honor, it is quite material for Mr. Woodruff, in respect to his getting his discharge—it is material as to whether the judgment should bear interest, because an action for damages for fraud, being an unliquidated claim, does not bear interest in an action for conversion. The law is that you are entitled to the value of the property and interest, on that claim, from the date of the conversion. We can't tell from the complaint here whether the default judgment is based upon count 1 or count 2 or count 3.

Also, Mr. Woodruff has filed a petition in bankruptcy. An action for fraud is not the discharge date, while on an

action for damages, or even an action for conversion, it is the discharge date. It becomes quite material again, and we have made the point, and the rule is that any count of a complaint in a Superior Court action, is quite distinct, and it must stand on its own feet. We submit there should have been a dismissal as to two counts, and a judgment entered as to one, or the judgment should have recited whether it is entered on count 1 or 2 or 3.

The next point that is made is that the complaint is barred by laches and the statute of limitations.

This point I have partially covered in my previous argument about the complaint not stating a cause of action, but it also appears upon the face of this complaint, assuming everything to be true as alleged, that plaintiff is guilty of the grossest form of laches. In other words, a man does not in 1928 turn over $200,000 or a half a million dollars worth of property and go running around the world, and lose that property, and not discover it or do anything about it until 1935, seven years later.

The seriousness—and the reason for the rule—and the courts have invoked it time after time, is that documents are lost, and witnesses removed, and, as in this case, when the company was in bankruptcy and the bankruptcy court destroyed its records after a certain period of time—all the way down the line it makes it very difficult to submit to the court the actual facts, and it is for that reason that the courts have, especially in fraud actions, adopted the rule requiring that a party must be free from laches, and must have a real meritorious excuse before he can come in, after the statutory period of time, after three years, on a fraud action—and the statute is three years, without regard to discovery, or conversion, if he relies strictly on conversion; and the courts have held that on a motion to set aside judgment of default under Section 473, and, as I say, 60 (b) of the Rules of Federal Procedure, under which we are making this motion, is word for word after the California Code Section. If we read the history of the adoption of Section 60 (b), it is stated that it was taken after the California Civil Code of Procedure, which has worked so well in this state, and, as Mr. Simkins points

out, all the California cases provide for a liberal construction of this section with the object in mind of giving a defendant who appears to have a meritorious defense a chance to have the case tried upon its merits, and then suggests that courts will, in construing this rule, adopt the same construction that the California courts have stated, and they follow again Wood v. Carpenter, 101, 135, that the

"Statutes of limitations are vital to the welfare of society and are favored in the law. They are found and approved in all systems of jurisprudence. They promote repose by giving security and stability to human affairs; important public policy lies at their foundation; they stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary."

In the case of Lilly-Brackett Co. v. Connemann, 157 Cal. 192, quoting from page 196, a motion was made to set aside default in that case, and the defense that was alleged to the cause of action was that the claim was barred by the statute of limitations, and the point was raised that that was not a meritorious defense on a motion to set aside a default judgment, and the Supreme Court settled that question in California by saying that it was a meritorious defense, and if that were the only defense set up, that they were entitled to have the motion set aside. Reading from the case:

"The sole question, then, is whether a plea of the statute of limitations is an answer to the merits. The point is one that has come before the courts of various states; and while the earlier cases showed a tendency to hold that such a plea is merely technical, and should not be permitted to defendant who has been in default, the decided weight of authority, and particularly of modern authority, supports the view that the statute of limitations is to be viewed as a statute of repose, and, as such, is a meritorious defense which may with propriety be set up after a default has been vacated."

I have cited in my brief other cases that follow that, and that is the rule, your Honor, in all of the cases in this state, and, as I say, if we follow that language of the

California Code of Civil Procedure and Section 60 (b), where they are the same it shows that by enacting that rule they intended to adopt also the decisions construing that section. In that connection, your Honor, Section 437—

The Court: I prefer that you not read any decisions. Do you think you have stated all of your points, Mr. Cobb?

Mr. Cobb: No, your Honor.

The Court: You had better hurry. You have been almost an hour already.

Mr. Cobb: Those cases I was about to read from state the rule to be—

The Court: Mr. Cobb, you must state your points. Your last one is as to laches; that is what you are on now. I know what you say about that. Take up your next step.

Mr. Cobb: The next point is that where personal service of summons has not been made you don't have to set up, under our *proceedure*, any excuse for not having answered; that if the summons has not been personally served, if he shows a meritorious defense, the court has the right to penalize that defendant for any expense he has caused the other side.

The Court: Where do you get that law?

Mr. Cobb: To start with.

The Court: I don't mean California decisions, I mean statutes.

Mr. Cobb: Section 437-C of the Civil Code of Procedure. This case squarely holds that he has it, as a matter of right, and then they reverse the case; they said there was no discretion in the court, if the affidavit showed a meritorious defense, though the court has a right to impose upon the defendant as a condition of coming into court a charge to cover the expense that the plaintiff has incurred, and, your Honor, when we consider the size of these judgments—

The Court: I will agree with you fully there. You don't need to spend any time on that at all. It is a heavy judgment; no question about that at all.

Mr. Cobb: I am appealing to your Honor, on behalf of the creditors and the bankrupt estate—

The Court: Are you appealing from Oklahoma or from Los Angeles?

Mr. Cobb: Your Honor, I have filed with you an order of the District Court of Oklahoma permitting me to file this motion on behalf of Mr. Jackson. That's where I get my authority, and Section 60(b) of the Federal Rules of Civil Procedure provide that the legal representative may move.

The Court: In reference to the amount of the judgment, if you had been here at the time of the previous hearing, you would have found that that was a matter of very considerable concern to the court, and the court attempted to state his position on it as frankly and fully as he could, but found no alternative but to enter the judgment as the evidence showed. I will admit I did it, as I stated at the time, with considerable reluctance, but nevertheless it appeared to be the only thing to do.

Mr. Cobb: As we pointed out, the trustee in bankruptcy, under the authorities, should have the right to present this case on its merits, and we are willing to stand any expense if your Honor will give us that chance. And on the point of this judgment I have been unable to find any authorities—in fact, there is one California case which held that if the court reopens a default, and does not allow a special defense by the statute of limitations of some other defendants, that that is error; in other words, the case has to be reopened as a whole, not on the judgment as to a particular point.

I do plead for the creditors of these parties, who were in no fault; who did not disobey this summons; were not guilty of any negligence; and I am willing, your Honor, that you impose a penalty for any trouble that has been caused in the matter; but do give us a chance to come into court on this case on its merits, and at this time I will propose an affidavit taken from the transcripts taken on the hearing, which goes to show that Mr. Heiser at the time he alleges in his verified complaint, he was in France

trying to work out a sale for this corporation; that he was selling merchandise of his own, trying to promote a stock company there. He also charges in the complaint that he was totally ignorant of stock ventures.

The Court: That is entirely collateral. That is nothing for the purpose here. I notice that Mr. Meyberg raises the section of the Code of Civil Procedure which he says concludes you in this matter. Do you have that in mind—1001 or 1010?

Mr. Cobb: Yes, your Honor. I have that in mind, and your Honor will note that the motion is made by Mr. Jackson, who is not a party to the original proceeding, and your Honor will recall that I called at your Honor's chambers and told you I desired to make a motion on behalf of Mr. Jackson to have this judgment set aside, and that the court required that an order be obtained in respect of the matter; otherwise there might be some contempt. Your Honor said it might be a salutary rule, but it was not a rule in this court, or under the Federal Rules of Procedure. That section is not a part of our procedure; it is purely a state court procedure. I would have presented the order only I did not think it applied, and in safety I asked your Honor whether I should submit a formal order, and I am completely convinced that—

The Court: I don't believe you are in contempt. I don't know what the merits may be, but I was perfectly willing for you to present whatever you had. I would not think it ill that you did that. I have no understanding it was covered by the code section. Have you said all you want to on that section?

Mr. Cobb: In order to point out to the court, the case that I cited says that the motion under Section 473 can be renewed by even the same party at a subsequent date; under 60 (b) the case I cited, a late Supreme Court case, gives the trustee in bankruptcy the right to make this motion. I submit that we have the complete right to make this motion.

The Court: It is not a question of your right to make the motion. It would be solely a question as to the effect

of the situation heretofore. I am not objecting to your making the motion, but what I have in mind is, what is the legal effect of proceeding as heretofore, when the previous motion was made.

Mr. Cobb: Do I understand you to mean whether I can renew that, your Honor, or whether I am barred by the order on the matter?

The Court: Yes; whether you are barred by the order already made.

Mr. Cobb: No; I don't believe so, on the case I have cited, where they went to the Supreme Court of this state, your Honor—a man took an appeal from the judgment; his appeal was dismissed, and the judgment was final; then the trustee in bankruptcy for this man came in and made a motion under Section 473, to set that judgment aside and permit him to come in and file an answer and defend the case. There was a case not only where there was a final judgment, but it had been on appeal, and the Supreme Court said that the trustee in bankruptcy had that right, and I have quoted in my points and authorities from that case, and there seems to be no question about it.

Mr. Meyberg: On that particular point, may it please the court, I pick it up where counsel left off. That case is one wherein the defendant proceeded under Section 473 to obtain relief from a judgment, and made a statement of certain facts. The court denied the motion, but without prejudice, stating that he had the right to renew, if he could prove the facts which he had alleged, holding he had not proved them, and counsel stated that he could still prove them, and counsel then on the second motion moved on the same facts, and the court denied the motion and the appeal. The Supreme Court held that the second motion was all right by reason of it having been denied without prejudice, but held that the finding of the court would stand, and that the Supreme Court would do nothing more.

I find no authority by counsel except that one case which he cites, outside of a statement in Corpus Juris, which he does not include, but in there there are no cases cited which give the right to the defendant to continue to make these motions.

I submit to your Honor that nothing is in the Rules of Federal Procedure, similar to 1008 of the Civil Code Procedure of the State of California, which I set up in my motion to strike, but there being no reference to that rule, it would be in conformity, so far as the Rules of Federal Procedure are concerned. So much for that, merely because counsel finished with his suggestion to your Honor, that he had a case in point, but cites no case in his brief in point. The case, Gray v. Lawlor, 151 Cal. 352, which he says he has, is not in point, I submit.

Now, as to our motion here, first, of course, Mr. Cobb was not present and apparently has not checked the record on file in this case as to the past procedure, and is not familiar with it. I am assuming that from the pleadings he has filed. It is interesting to note that in his argument he has set forth no grounds for his motion. All of his argument is on the merits of the case. He has stated no ground of these things under Rule 60, which are through the mistake of Mr. Woodruff. He has said nothing about any mistake Mr. Woodruff made, or the inadvertence of Mr. Woodruff; he has said nothing about the inadvertence, the surprise of Mr. Woodruff, or excusable neglect. He has given no grounds in his motion, and no grounds here, I submit, in his argument. He has only argued on the question of merit from one thing to another.

I will take that up, if your Honor believes any of that should be answered, although I think there is a legal answer to all of that. Even the statute of limitations—even the cases counsel cites in his brief, hold it is a statute of repose, unless put in by demurrer, and states a good cause of action. In every case counsel has cited, time after time a demurrer is interposed, a special demurrer of the statute of limitations. Counsel does not tell that to your Honor, so, so far as the complaint is concerned it states a good cause of action against the statute of limitations; but that still goes to the merits.

Now, so far as the questions of service are concerned, your Honor, without going into the details or the actual situation regarding the actual service with which I believe your Honor is familiar—there is plenty of it in the record here; lots of affidavits, the time when he received it and

all—irrespective of that, the defendant Woodruff has appeared in this action. Your Honor, if he appeared and did nothing else but stand before the court with his counsel present, and asked the court for a stay of execution, he has appeared, if there was any service that was wrong. In addition to that, there is a stipulation here where plaintiff waived several causes of action and several rights or interests of the plaintiff are waived by the plaintiff by this stipulation.

The Court: I don't know that I grasp that.

Mr. Meyberg: There has been a general appearance by the defendant.

The Court: Yes.

Mr. Meyberg: And the cases hold, may it please the court, that the appearance of the defendant is a general appearance if he asks permission to file a defense on the merits. He is not appearing even specifically here at this time. He is asking the right to file an answer. He is not before this court on a motion to quash service. That point isn't raised; that is waived. I am not saying we haven't got a good answer to all counsel suggests here, but I am just going on the theory that there is not any question of that kind involved.

Let me go to the question of the motion to strike, which I believe creates quite a serious situation for the defendant. The defendant in this action, or, rather, the moving party, moves jointly in behalf of Leonard Woodruff and P. M. Jackson. Now, if he moves on behalf of Leonard Woodruff he is moving jointly on behalf of both. If he moves on behalf of Leonard Woodruff, Mr. Cobb is not an attorney of record. As I suggested the other day, and as the court very aptly pointed out to counsel, he was not technically in this thing, but in this particular case, he asked counsel as a courtesy, or the court, probably, would he give him authority to appear. I believe that is stated in more exact terms than that. Nothing further has been done. Mr. Cobb still appears as a stranger, so far as the record is concerned. Ames Peterson, Beveridge, and Fitzpatrick all appeared as counsel for Mr. Woodruff. Counsel would have no right to file a motion on behalf of Woodruff unless

he were substituted. He is a perfect stranger, so far as the record is concerned.

Second, he answered on behalf of P. M. Jackson, and makes a motion. Before P. M. Jackson can make a motion, I submit that he must file his petition to intervene, and that petition must be granted under Rule 24 of our Rules of Civil Procedure, which provide:

"Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene:"

and so on and so forth.

Even if there is an unconditional right by statute to intervene still he must petition the court for the right to intervene, or he is not a party to this record, and cannot move for the relief, and the Rules of Procedure provide in (c) of Rule 24, as follows:

"Procedure. A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense by which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene."

May it please the court, how can these parties as strangers to this court, file a motion and bring before your Honor an action—

The Court: Doesn't the term "intervention" imply other interests. The trustee in bankruptcy represents, I believe, most of the creditors of the bankrupt.

Mr. Meyberg: The creditors, your Honor.

The Court: He represents the bankrupt also.

Mr. Meyberg: If he represents the bankrupt he would have to be substituted; he would have to come in under the rule in regard to substitution. He could not come in just as a stranger.

The Court: It is the same situation as that presented by an administrator.

Mr. Meyberg: The same thing. He would have to come in by substitution on motion.

The Court: In place of the defendants?

Mr. Meyberg: Exactly, your Honor.

The Court: Just to interrupt you—Mr. Cobb, I do recollect now that I said something about your representing Mr. Woodruff personally in court. Was anything done about that?

Mr. Cobb: Your Honor, I have to get a substitution from Oklahoma. I haven't had time to, of course, get an order of substitution, if your Honor requires it.

The Court: Mr. Meyberg is exactly right. I am disposed to proceed with extreme caution in this case. I recall that now. I did not while you were speaking about that. That seems to be the case.

Mr. Cobb: Your Honor, let me state I did not understand your Honor, and I would be glad to, if your Honor feels that way. My statement was that the Supreme Court in the case of Nuckolls v. Bank of California—the Supreme Court held, in 10 Cal. (2d) 273, that the trustee in bankruptcy had a right to come in and make this motion.

The Court: I will agree with that all right, but what I had in mind was you are making it on behalf of Mr. Woodruff.

Mr. Cobb: May I answer, if that was under the Bankruptcy Act, I think Section 67 of the Act provides that the trustee shall have all the powers to act for the bankrupt, which the bankrupt could have exercised for his own benefit. I made the motion in Mr. Woodruff's name, on behalf of the trustee, and I submitted, your Honor, a certified copy of the order appointing the trustee and the order of the court authorizing me to make this motion. I am not appearing for Mr. Woodruff that is to be before this court. I am appearing for a different Mr. Woodruff; in other words, the trustee has taken over his powers and duties.

The Court: Then you should eliminate Mr. Woodruff.

Mr. Cobb: Except I used his name in the motion.

The Court: Wait a minute. I understand your motion is on behalf of Mr. Woodruff and the trustee. Am I right?

Mr. Meyberg: It is, your Honor, in the notice of motion.

Mr. Cobb: We can eliminate Mr. Woodruff and I could stand on the motion on behalf of Mr. Jackson.

(Here follows the decision of the court heretofore transcribed.)

Reporter's Transcript of Ruling and Remarks of the Court on Motion to Vacate Judgment and Set Aside Default.

In the District Court of the United States for the Southern District of California, Central Division.

Hon. George Cosgrave, Judge, Presiding.

M. E. Heiser, Plaintiff, v. Leonard Woodruff, et al., Defendants. No. 7256-C-Law.

Appearances: Leonard Meyberg, Esq., for Plaintiff. Cobb, Campbell & Kelley, By Francis B. Cobb, Esq., for Defendant Leonard Woodruff and P. M. Jackson, Trustee in Bankruptcy.

Los Angeles, California, Tuesday, September 26, 1939, 2 P. M.

The Court: I think I may state my position in this matter and I will do so with entire frankness: I was struck with the amount of this judgment, on the trial of the case. The record, in respect to the service, shows a condition of affairs that in my judgment deprives the defendant of anything in the way of indulgence, altogether; and, again, we spent several days here trying to ascertain the value of this material, of which there were several bags, and I was very considerably surprised at the value given by apparently

very disinterested witnesses. In fact, the weight of the testimony showed the material to be of considerable value, but the defendant himself, being in court all the time, or, at least nearly all the time, failed to offer himself as a witness. He was competent to testify, and he did not see fit to testify.

That being the case, the value seeming at first glance to be something very considerable, there was in reality nothing for the court to do but to give the judgment it did.

When the motion was made all the facts existed upon which you now depend to have it set aside; everything existed then that exists now in that respect, so far as the merits of the motion go.

The motion was presented. I don't remember just what was done in the way of formal order, but so far as setting the default aside, so far as the appearance of this defendant went, that was denied, and we rather agreed that he might produce evidence as to the value of the gems. That was the result, and that was about the way the thing came about.

There comes to my mind now this one element: Mr. Meyberg, what do you think about the service of summons in the form of that used? The summons that was actually served was in the form issued by the federal court?

Mr. Meyberg: In the clerk's office.

The Court: And followed, of course, the form used at that time?

Mr. Meyberg: Supplied by the clerk.

The Court: To what extent does that follow the state form?

Mr. Meyberg: It was the form issued out of the United States clerk's office. The only thing counsel says was not on that form that should have been on there, would be the address of counsel. It had my name on there, and it was attached to the copy of the complaint, which had my address

on there. That is shown in the record; so that everything is complied with that was required by statute.

The Court: That straightens me out on the form of the summons.

Mr. Meyberg: Yes, the form is correct.

The Court: I am satisfied that the service was good as of that time, being after the rules went into effect.

Mr. Meyberg: In addition to that there has been a general appearance by the defendant, which would waive any question of that kind.

Mr. Cobb: Counsel made a mistake there which I would like to correct. That stipulation specifically provided that Mr. Woodruff was not waiving his motion which was made to quash service of the summons.

Mr. Meyberg: That is not true.

Mr. Cobb: I would like for the court to read the stipulation that was made. It reserved that point. I submit, your Honor, that since the default judgment was never set aside you could not have an appearance.

The Court: I think that, especially having in view the gyrations that have followed since that date, the best thing for the court to do is to dispose of this matter so that the matter may go on, as no doubt it will be appealed to the upper court.

Mr. Cobb: May I say I doubt very much if there can ever be an appeal in this matter. That is what so shocks us and alarms us, and why I beg your Honor to impose a penalty, and let us pay them three or four thousand dollars for Mr. Meyberg's time, and try this case on its merits, because I think, with all due respect to your Honor, your Honor knows we have never had a chance to try it on its merits; we have never had a chance to prove by documentary evidence facts I know can be proved, and which will defeat this trial on the merits. The question of value is hard to show, but it is to reach the merits of this case, your Honor, on defenses which I know can be presented. I am speaking for the creditors, and if there has been any disrespect to

the court on the part of Mr. Woodruff, I submit the trustee is not chargeable with that; but do let us present the case on the merits, your Honor, with the penalty your Honor feels is fair to assess.

The Court: The matter stands submitted. The motion is denied.

Mr. Cobb: Your Honor, does "submitted" mean that you will consider it further?

The Court: No, it is decided. That is merely for the purpose of the record, so that there will be no aftermath.

Mr. Cobb: Your Honor ordered Mr. Meyberg at the last hearing to prepare an order. That has not been prepared. Only a minute order appears on the record, and I submit we are entitled to have a formal order. He was directed to prepare such formal order, and if your Honor would require him to do that, the formal written order could also include the motion today, in order that such record will be straight.

Mr. Meyberg: May I state, your Honor, counsel never having been present probably would not be familiar with that subject, but at the time your Honor ruled, your Honor stated that Mr. Meyberg could prepare the order if he felt that one was necessary. The clerk did not get other than "Mr. Meyberg prepare the order", but your Honor will have in mind the judgment was entered, and the stipulation was that the court found the value of the gems less than the amount in the judgment—

The Court: I have no recollection of the situation with respect to the judgment, so am totally helpless in the matter.

Mr. Cobb: The minute order was that your Honor instructed Mr. Meyberg to prepare a written order.

The Court: If that was so, then Mr. Meyberg will have to suffer the consequences. I am not going to change or add to the record now.

Mr. Cobb: The order is that he will prepare such order?

The Court: I am making no order at the present time, Mr. Cobb. As I say, I would not add or detract from what

has been done heretofore, because I myself have no memory of it.

Mr. Cobb: The record should be complete. In other words, if we try to take an appeal now, the written order has not been filed pursuant to the minute order denying the motion, and they would say that since no such order is filed that we cannot take an appeal. Because that was the order we are entitled to either prepare the order ourselves—

The Court: Your appeal will lie from the minute order, will it not?

Mr. Cobb: No, your Honor, I don't think so, in this type of pleading.

Mr. Meyberg: As a matter of fact, I don't think there is an appeal anyhow, and even if there is, it would lie from the minute order as well as anything else.

The Court: I think the minute order is sufficient, there being no written order.

Mr. Cobb: But the minute order provided there should be a written order. That is the point, your Honor. Would your Honor correct the record then, because the way the record stands now if I went up on the minute order the Supreme Court would say: "Where is the written order required to be filed?"

The Court: You will have to take the record as it is. The entire proceeding, and the complexion of this case, makes the court extremely cautious about proceeding or making any order whatever. I am compelled to leave the record standing as it is. If the order was not correctly taken down by the clerk, there are ways of correcting it.

Mr. Meyberg: Yes, your Honor. May this record show the denial of all of the motions?

The Court: Yes. That is my understanding.

Mr. Cobb: May I submit an order on the denial, your Honor?

The Court: Ordinarily the prevailing party does that, if that is agreeable to Mr. Meyberg.

Mr. Meyberg: I don't believe a written order is necessary. I think the minute order is sufficient.

Mr. Cobb: I want a written order, your Honor, and I will be glad to prepare it.

Mr. Meyberg: If your Honor please, if a written order is necessary I will be glad to prepare it, of course.

The Court: I take no position in the matter. The court has functioned, and has made the minute order. That is as far as it goes. Mr. Meyberg can prepare the written order if he desires. He is the prevailing party. That is the custom of the court, and he may prepare the written order if he so desires. If not, then the minute order will stand.

State of California, County of Los Angeles, ss.

I, H. A. Dewing, being first duly sworn, do hereby certify and say that, on the twenty-sixth day of September, 1939, I was a duly qualified and acting shorthand reporter of the United States District Court in and for the Southern District of California, and that as such reporter and on the date above-mentioned I faithfully and correctly took down in shorthand writing all proceedings had and testimony given in a cause entitled M. E. Heiser v. Leonard Woodruff et al., No. 7256-C-Law, then on trial before Hon. George Cosgrave, a judge of said court, sitting in Los Angeles, California; that thereafter I caused said notes to be transcribed into typewriting and I certify that the foregoing transcript, numbered from 1 to 8, both inclusive, is a full, true, faithful and correct transcription of the Ruling and Remarks of the Court on Motion to Vacate Judgment and set aside Default on the above date.

Dated this 11th day of March, 1941.

H. A. Dewing,
Shorthand Reporter, United States District Court for the Southern District of California, Central Division.

Subscribed and sworn to before me this 11th day of March,

1941. G. M. Fox, Notary Public in and for the County of Los Angeles, State of California.

Objectors' Exhibit DD.

Objectors' Exhibit DD is a certified copy of the transcript of the record, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser. The designated portions of the said transcript of record appear in this record among the Heiser exhibits as follows:

C—Complaint (page 45).

D—Summons etc. (page 214).

E—Affidavit etc. (page 218).

F—Judgment (page 10).

G—Notice of motion to set aside default and judgment and motion to set aside default and judgment (page 219).

I —Reply in opposition to defendant Woodruff's additional points and authorities on motion to set aside default (page 227).

J—Minute order, June 8, 1939 (page 263).

M—Minute order, June 29, 1939 (page 274).

N—Notice of motion to vacate judgment etc. (page 275).

O—Affidavit of merits in support of motion to vacate judgment (page 278).

P—Affidavit of M. E. Heiser (page 281).

Q—Affidavit of Leonard J. Meyberg (page 284).

R—Clerk's minutes, September 26, 1939 (page 285).

S—Notice of appeal (page 286).

U—Statement of points relied on (page 289).

Objectors' Exhibit EE.

[Certified Copy of Appellants' Opening Brief.]

No. 9356, In the United States Circuit Court of Appeals for the Ninth Circuit.

P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff, a Bankrupt, and Leonard Woodruff, Appellants, v. M. E. Heiser, Appellee.

[Pursuant to instruction contained in appellants' designation of the printed record in case No. 3052, only the titles of certain subjects discussed in the brief are printed.]

The Orders Appealed From Are Appealable Orders. The Trustee in Bankruptcy Was a Proper Party to Move Under Section 60b to Vacate Default and Defend on the Merits. The Default Judgment is Invalid by Reason of Improper Service of Process, Improper Writ. Improper Service. The Judgment Was Prematurely Entered in That the Complaint Was Based Upon a Joint Liability on an Alleged Conspiracy and Judgment Was Entered as to One Defendant Prior to Trial of the Issues With Respect to Other Defendants. Judgment Should Have Been Vacated for the Reason That the Complaint Did Not State a Cause of Action. No Cause of Action Stated for Fraud. No Cause of Action for Conversion. No Cause of Action Is Stated for Interest From May 13th, 1929, and the Judgment, Therefore, is Erroneous. Plaintiff's Cause of Action is Barred by Laches and the Statute of Limitations. The Motion of the Trustee in Bankruptcy Should Have Been Granted Under Section 67 of the Bankruptcy Act. The Lower Court Abused Its Discretion in Denying the Motions of Appellants Under Section 60b of the Federal Rules of Civil Procedure. The Reopening for the Purpose of Receiving Evidence as to Value Only Was Improper.

Objectors' Exhibit FF.

[Certified Copy of Appellee's Brief.]

No. 9356, In the United States Circuit Court of Appeals for the Ninth Circuit.

P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, a Bankrupt, and Leonard J. Woodruff, Appellants, v. M. E. Heiser, Appellee.

[Pursuant to instruction contained in appellants' designation of the printed record in case No. 3052, only the titles of certain subjects discussed in the brief are printed.]

The Orders Appealed From Are Not Appealable Orders. The Trustee in Bankruptcy Succeeded Only to the Rights of the Alleged Bankrupt Woodruff, Whose Motion to Set Aside Default and Judgment Had Been Denied by an Order Which Already Had Become Final Against Him. There Was No Improper Writ Nor Improper Service of Process. The Judgment Was Not Prematurely Entered Before Service of Process Upon Other Defendants, Because the Gist of the Action Is Not Joint Conspiracy But Fraud and False Representations, and Conversion. The Complaint States a Cause of Action for Fraud, for Conversion, and for Interest on the Value of the Gems Converted. There Is No Merit to the Defendant's Contention of Laches and Limitations, Particularly Where Delay in Service Was Due to Defendant's Concealment and Avoidance of Service. The Motions Denied Herein Do Not Come Under Section 67 of the Bankruptcy Act. The Lower Court Exercised a Wise Discretion in Denying Appellants' Motion. There Was No Reopening for the Purpose of Receiving Evidence as to Value, Nor Is This a Subject for Review Here.

Objectors' Exhibit GG.

[Certified Copy of Appellants' Closing Brief.]

No. 9356, In the United States Circuit Court of Appeals for the Ninth Circuit.

P. M. Jackson, Trustee in Bankruptcy of the Estate of

Leonard Woodruff, a Bankrupt, and Leonard Woodruff, Appellants, v. M. E. Heiser, Appellee.

[Pursuant to instruction contained in appellants' designation of the printed record in case No. 3052, only the titles of certain subjects discussed in the brief are printed.]

Orders Appealed From Are Appealable Orders. Rights of the Trustee. Invalidity of the Default Judgment. Impropriety of the Judgment. Complaint Fails to State a Cause of Action. Laches and Limitations. Applicability of Section 67d(2) of the Bankruptcy Act. Abuse of Discretion by Lower Court. Reopening for the Purpose of Receiving Evidence as to Value.

Objectors' Exhibit HH.

Complaint. (Promissory Note.)

In the Superior Court of the State of California in and for the County of Los Angeles.

Adolph Kosches, doing business under the fictitious firm name and style of Kosches Bros, Plaintiff, v. Golden State Gem Co., a Corporation, Defendant.

Plaintiff complains and alleges:

I.

That the defendant is a corporation, organized and existing under and by virtue of the laws of the State of California.

II.

That Adolph Kosches, the plaintiff, is doing business under the fictitious firm name and style of Kosches Bros., and has complied in all respects with the provisions of Section 2466 et seq. of the Civil Code of the State of California.

III.

That on the 18th day of December, 1928, at Los Angeles, California, the defendant, as such corporation, made, executed and delivered to the plaintiff its promissory note in writing, whereby it agreed to pay to plaintiff on March 18th,

1929, the sum of One Thousand and Seventy-Five ($1,075) Dollars, which note is, in words and figures, as follows:

$1075.00 Los Angeles, Cal. December 18th, 1928.

March 18th, 1929, after date, without grace, I promise to pay to the order of Kosches Bros. Ten Hundred seventy five and no/100 Dollars. For value received, with interest from date at the rate of no per cent per annum until paid. Principal and interest payable in Lawful Money of the United States, and in case suit is instituted to collect this note or any portion thereof, I promise to pay such additional sum as the Court may adjudge reasonable as Attorney's fees in said suit.

GOLDEN STATE GEM CO.,
WALTER CALVIN SMITH, Pres.
(Signed)

726 San Pedro St.

Payable at 726 San Pedro St.

No. 2477. Due March 18th, 1929.

IV.

That said note provides, among other things, that in event suit was instituted to collect this note or any portion thereof, the defendant will pay such additional sums as the Court may adjudge reasonable as attorney's fees in said suit.

V.

That it has been necessary for plaintiff to employ, and he has employed Willebrandt & Horowitz as his attorneys for the purpose of bringing suit to collect said note, and that the sum of One Hundred Fifty ($150) Dollars is a reasonable sum to be allowed as attorney's fees in said suit.

VI.

That no part of said note has been paid, and the whole thereof is now unpaid.

Wherefore plaintiff demands judgment against defendant in the sum of One Thousand and Seventy-Five ($1,075) Dol-

lars, together with interest at seven per cent per annum from the 18th day of March, 1929, together with One Hundred Fifty ($150) Dollars attorney's fees, and for his costs incurred herein.

WILLEBRANDT & HOROWITZ,
By GIRARD F. BAKER,
Attorneys for Plaintiff.

[Verified.]

In this action the Defendant Golden State Gem Co., a corporation, having been regularly served with process, and having failed to appear and answer the plaintiff's complaint, on file herein, and the time allowed by law for answering having expired, the default of said Defendant, in the premises is hereby duly entered according to law.

Attest: My hand and the seal of said Court, this Apr. 26, 1929.

L. E. LAMPTON, County Clerk,
(Seal) By J. F. RICE, Deputy.

[Summons.]

The People of the State of California Send Greetings to Golden State Gem Co., a corporation, Defendant.

You are directed to appear in an action brought against you by the above named plaintiff in the Superior Court of the State of California, in and for the County of Los Angeles, and to answer the complaint therein within ten days after the service on you of this Summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the plaintiff will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of

the County of Los Angeles, State of California, this 1st day of April, 1929.

L. E. LAMPTON,
County Clerk and Clerk of the Superior Court of the State of California in and for the County of Los Angeles.
By W. D. BUCKEY, Deputy.

(Seal Superior Court Los Angeles County.)

Notice.

Appearance: "A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C. C. P.)

Answers or demurrers must be in writing, in form pursuant to rule of court, and filed with the clerk.

State of California, County of Los Angeles, ss.

R. H. Orr, being sworn, says: I am and was at the time of the service of the summons herein, over the age of eighteen years, and not a party to the within entitled action; I personally served the within Summons on the hereinafter named defendants, by delivering to and leaving with each of said defendants personally, in the County of Los Angeles, State of California, at the time set opposite their respective names, a copy of said Summons attached to a copy of the Complaint referred to in said Summons.

Names of Defendants Served: Golden State Gem Co., a Corp., by Serving the Managing Agent Thereof, J. T. Carroll. Date of Service: April 11, 1929.

My Fees for Services are, $.50 for.....miles actually traveled at..... cents per mile, $.50. Total $1.00.

R. H. ORR.

Subscribed and sworn to before me this 19 day of April, 1929.

L. E. LAMPTON, County Clerk.
By .....Deputy.

Wilbur G. Smith, Notary Public in and for the County of Los Angeles, State of California.

Filed Apr. 26, 1929. L. E. Lampton, County Clerk. by J. F. Rice, Deputy.

Judgment by Default, by Court.

No. 275003.

In this action the defendant, Golden State Gem Co., a corporation, having been regularly served with process, and having failed to appear and answer the plaintiff complaint filed herein, and the legal time for answering having expired, and no answer or demurrer having been filed, the default of said defendant, Golden State Gem Co., a corporation, in the premises having been duly entered according to law:

Now, on application of Willebrandt & Horowitz, by Girard F. Baker, attorneys for said plaintiff, it is hereby ordered, that judgment be entered herein against the said defendant, Golden State Gem Co., a corporation, in accordance with the prayer of said plaintiff complaint on file herein.

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged and decreed, that Adolph Kosches, plaintiff, do have and recover of and from the said defendant, Golden State Gem Co., a corporation, the sum of One Thousand and Seventy-Five ($1,075.) dollars, with interest thereon, at the rate of seven per cent. per annum from the date hereof until paid: together with said plaintiff's costs and disbursements incurred in said action, amounting to the sum of $16.75, all in gold coin of the United States, together with attorney's fees in the sum of One Hundred and Two and 50/100 ($102.50) Dollars.

And It Is Further Ordered, adjudged and decreed, that said plaintiff do have execution against the separate property of the defendant, Golden State Gem Co., a corporation, as well as against the joint property of all the said defendant.

Judgment rendered May 1st, 1929.

MARSHALL F. McCOMB, Judge.

Clerk's Office of the Superior Court, in and for the County of Los Angeles, State of California, ss.

I, the undersigned, Clerk of said Court, do hereby certify the foregoing to be a true copy of the Judgment entered in the above entitled action.

Attest my hand and the seal of said Court, this..... day of.....19.....

H. J. LELANDE, Clerk.
By .....Deputy Clerk.

Affidavit for Attachment Against Resident.
Section 538.

Adolph Koseches being sworn, says: I am the Plaintiff herein; that the Defendant herein is indebted to me in the sum of $1075.00, lawful money of the United States, over and above all legal setoffs and counter-claims, upon an express contract, for the direct payment of money, to-wit: Promissory Note, and that such contract was made or is payable in this State; and that the payment of the same has not been secured by any mortgage or lien upon real estate or personal property, or any pledge of personal property.

That the attachment is not sought, and the action is not prosecuted to hinder, delay, or defraud any creditor or creditors of the said defendant, or any creditor or creditors of any or either of said defendants.

ADOLPH KOSCHES.

Subscribed and sworn to before me this 1st day of April, 1929. Girard F. Baker, Notary Public in and for the County of Los Angeles, State of California.

Objectors' Exhibit II.

Complaint.

(Promissory Notes and Moneys.)

In the Superior Court of the State of California, in and for the County of Los Angeles.

Leonard Woodruff, Plaintiff, v. Golden State Gem Co., a California Corporation, and Golden State Gem Co. of Nevada, a Nevada Corporation, Defendants.

Plaintiff alleges:

I.

That at all times herein mentioned the Golden State Gem Co. was and is now a corporation duly organized and existing under the laws of the State of California, with its principal place of business in the City of Los Angeles, State of California.

II.

That the Golden State Gem Co. of Nevada is a corporation duly organized under the laws of the State of Nevada, with its place of business in the State of California, located in the City of Los Angeles, State of California.

III.

That on the 20th day of January, 1928, the defendant Golden State Gem Co., a California corporation, made, executed and delivered to the Alphonse Jeddis Company two certain promissory notes, which said notes are in words and figures as follows, to-wit:

$500.00 Los Angeles, Cal., Jan. 20, 1928. Eighteen months after date, for value received, I, we, or either of us, jointly and severally promise to pay to the order of Alphonse Jeddis Company at Union Bank & Trust Co. of Los Angeles Five Hundred and no/100 Dollars, with interest thereon at the rate of 6 per cent, per annum from date until paid; principal and interest payable in United States Gold Coin of the present standard of weight and fineness, or its equivalent. Interest payable at maturity and if not paid when it becomes due, to be added to the principal and become a part

thereof and bear interest at the same rate. Upon default in payment of any installment or of interest, the whole shall become due at the option of the holder of this note. In case this note be not paid at maturity, I, we, or either of us, jointly and severally promise to pay all costs of collection and reasonable attorney's fees.

GOLDEN STATE GEM CO.,
W. C. SMITH, Pres.,
C. E. BUCK, Secy.
(Seal) LEONARD WOODRUFF.

Address 726 San Pedro St., Los Angeles, Calif.

Phone ME-03-18

(Indorsed:)

Paid in full by Leonard Woodruff Apr 9th, 1929. Henry Haves, Attorney for Alphonse Jeddis Co.

$500.00 Los Angeles, Cal., Jan. 20, 1928 One year after date, for value received, I, we, or either of us, jointly and severally promise to pay to the order of Alphonse Jeddis Company at Union Bank & Trust Co. of Los Angeles Five Hundred and no/100 Dollars, with interest thereon at the rate of 6 per cent, per annum from date until paid; principal and interest payable in United States Gold Coin of the present standard of weight and fineness, or its equivalent. Interest payable at maturity and if not paid when it becomes due, to be added to the principal and become a part thereof and bear interest at the same rate. Upon default in payment of any installment or of interest, the whole shall become due at the option of the holder of this note. In case this note be not paid at maturity, I, we, or either of us, jointly and severally, promise to pay all costs of collection and reasonable attorney's fees.

GOLDEN STATE GEM CO.
W. C. SMITH, Pres.
C. E. BUCK, Secy.
(Seal) LEONARD WOODRUFF.

Address 726 San Pedro St., Los Angeles, Calif.

Phone ME-0318.

(Indorsed:)

$350.00 paid by Golden State Gem Co., and $183.15 paid by Leonard Woodruff. Henry Haves, Attorney for Alphonse Jeddis Co., Apr 9, 1929.

IV.

That at the time of the execution and delivery of the said notes, the plaintiff signed same as an accommodation maker and indorser, at the request of the said Golden State Gem Co., of California, a corporation, upon its promise that it would pay said notes at maturity and the interest thereon as the same became due. That plaintiff received no consideration therefor.

V.

That said defendant Golden State Gem Co. of California, delivered said notes to the said Alphonse Jeddis Company to cover certain indebtedness due and owing to the said Alphonse Jeddis Company by the Golden State Gem Co. of California, a Corporation.

VI.

That the defendant Golden State Gem Co. of California, a Corporation, did not pay the aforesaid note due on January 20th, 1929, at its maturity, except the sum of $350.00, advanced by plaintiff, and plaintiff was thereupon compelled to, and did, on the 9th day of April, 1929 pay the balance due thereon, to-wit: the sum of $183.15 in discharge of said note, and that no part of the said sum has been paid to the plaintiff.

VII.

That on or about the 9th day of April, 1929, the said defendant Golden State Gem Co. of California, a Corporation, by and through its President W. C. Smith, notified and advised plaintiff that it would be unable to pay the aforesaid note for $500.00 due eighteen months after date, at its maturity, and requested plaintiff to pay the same in order to avoid a law suit and preserve the standing and credit of the said Golden State Gem Co. of California, a Corporation, and plaintiff did, at the instance and request of said Golden State Gem Co. of California, a Corporation, on the 9th day of

April, 1929, pay the sum of $536.25, principal and interest, in discharge of said note, and that no part of the said sum has been paid to the plaintiff.

VIII.

That plaintiff has been informed and believes, and upon such information and belief alleges that the defendant Golden State Gem Co. of Nevada has purchased the stock and assets of the Golden State Gem Co. of California and has received the benefits arising out of the execution and delivery of the aforesaid promissory notes and has agreed to assume the indebtedness due thereon and to pay the same; that plaintiff has made demand upon the said Golden State Gem Co. of Nevada for the payment of the said sum of *533.15
$183.15 and $536.25, but while admitting it assumed liability thereon, it has failed, neglected and refused to pay same.

*—Figures in italics appear in handwriting on original.

IX.

That demand has been made upon the said defendants for the payment of the aforesaid sums of $533.15 and $536.25; that the said defendants have failed, neglected and refused to pay the same or any part thereof, and there is now due, owing and unpaid from said defendants to plaintiff the sum of $1069.40, with interest thereon from April 9th, 1929.

For a Second Cause of Action against said defendants plaintiff alleges:

I.

Plaintiff hereby adopts the allegations of paragraphs "I" and "II" of plaintiff's First Cause of Action as if the same were fully set forth herein, and hereby refers to and makes the same a part of this Second Cause of Action.

II.

That on the 9th day of April, 1929, at the special instance and request of defendants, plaintiff advanced and paid the sum of $250.00 for and in behalf of said defendants as and for the rental of their store situated at 726-728½ South San Pedro Street, Los Angeles, California, covering

a period from March 1st, 1929 to May 1st, 1929, which said sum defendants promised to pay plaintiff on demand thereafter.

III.

That plaintiff has made demand upon said defendants for the payment of said sum of $250.00; that defendants have failed, neglected and refused to pay the same and there is now due, owing and unpaid from said defendants to plaintiff the sum of $250.00 with interest thereon from April 9th, 1929.

For a Third Cause of Action against defendants plaintiff alleges:

I.

Plaintiff hereby adopts the allegations of paragraphs "I" and "II" of plaintiff's First Cause of Action as if the same were fully set forth herein, and hereby refers to and makes the same a part of this Third Cause of Action.

II.

That on April 11th, 1929, at the special instance and request of said defendants, the plaintiff advanced and paid the sum of $32.34 for light and power furnished at their place of business, which said sum the defendants agreed to pay plaintiff on demand thereafter.

III.

That plaintiff has made demand on said defendants for the payment of the sum of $32.34, but defendants have failed, neglected and refused to pay the same, or any part thereof, and there is now due and owing from the said defendants to plaintiff the said sum of $32.34.

Wherefore, Plaintiff demands judgment. (1) For the sum of $1069.40 on Plaintiff's First Cause of Action. (2) For the sum of $250.00 and interest on Plaintiff's Second Cause of Action. (3) For the sum of $32.34 on Plaintiff's Third Cause of Action. (4) And for costs of this suit.

J. A. COLEMAN,
Attorney for Plaintiff.

[Verified.]

In this action the Defendant, Golden State Gem Co., a California Corporation, and Golden State Gem Co., of Nevada, a Nevada corporation, having been regularly served with process, and having failed to appear and answer the plaintiff's complaint, on file herein, and the time allowed by law for answering having expired, the default of said Defendant, in the premises is hereby duly entered according to law.

Attest: My hand and the seal of said Court, this May 10, 1929.

L. E. LAMPTON, County Clerk,
(Seal) By J. F. RICE, Deputy.

[Summons.]

The People of the State of California Send Greetings to:

Golden State Gem Co., a California Corporation, and Golden State Gem Co. of Nevada, a Nevada Corporation, Defendants.

You are directed to appear in an action brought against you by the above named plaintiff.... in the Superior Court of the State of California, in and for the County of Los Angeles, and to answer the complaint therein within ten days after the service on you of this Summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the plaintiff....will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, this 19th day of April, 1929.

L. E. LAMPTON,
County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

(Seal Superior Court Los Angeles County) By W. D. BUCKEY, Deputy.

Notice.

Appearance: "A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C.C.P.)

Answers or demurrers must be in writing, in form pursuant to rule of court, and filed with the clerk.

State of California, County of Los Angeles, ss.

J. A. Coleman, being sworn, says: I am and was at the time of the servce of the summons herein, over the age of eighteen years, and not a party to the within entitled action; I personally served the within Summons on the hereinafter named defendants, by delivering to and leaving with each of said defendants personally, in the County of Los Angeles, State of California, at the time set opposite their respective names, a copy of said Summons attached to a copy of the Complaint referred to in said Summons.

Names of Defendants Served—Date of Service:

Golden State Gem Co., a California corporation, by delivering copy of summons and complaint to Walter Calvin Smith, its president, on April 26, 1929.

Golden State Gem Co. of Nevada, a Nevada corporation, by delivering a copy of summons and complaint to Walter Calvin Smith, its president, on April 26, 1929.

My Fees for Services are, $.....for.....miles actually traveled at.....cents per mile, $..... Total.....

J. A. COLEMAN.

Subscribed and sworn to before me this 10th day of May, 1929.

L. E. LAMPTON, County Clerk.
By J. F. RICE Deputy.

.....

Notary Public in and for the County of Los Angeles, State of California.

Filed May 10, 1929. L. E. Lampton, County Clerk. By J. F. Rice, Deputy.

Affidavit for Attachment Against Resident
Section 538

State of California, County of Los Angeles, ss.

J. A. Coleman being sworn, says: I am the Attorney for Plaintiff herein; that the Defendants herein are indebted to plaintiff in the sum of $1069.40 lawful money of the United States, over and above all legal setoffs and counter-claims, upon an express contract, for the direct payment of money, to-wit: Payment of notes and money advanced, and that such contract was made or is payable in this State, and that the payment of the same has not been secured by any mortgage or lien upon real estate or personal property, or any pledge of personal property.....

.....

That the attachment is not sought, and the action is not prosecuted to hinder, delay, or defraud any creditor or creditors of the said defendant, or any creditor or creditors of any or either of said defendants.

J. A. COLEMAN

Subscribed and sworn to before me this 19th day of April, 1929. Edward Fitzpatrick, Notary Public in and for the County of Los Angeles, State of California. (Seal).

[Default judgment, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Company et al., appears at page 73.]

Execution.

In the Superior Court of the State of California in and for the County of Los Angeles.

The People of the State of California to the Sheriff of the County of Los Angeles,

Greeting: Whereas, on the 10 day of May, 1929, Leonard Woodruff, recovered a Judgment in the Superior Court of the County of Los Angeles against Golden State Gem Co. of Nevada, a Corporation and Golden State Gem Co. a

Corporation for the sum of $1676.22, together with $..... costs and disbursements, which Judgment was on the 11 day of May, 1929, entered in Judgment Book No. 739, at page 51 and the Judgment Roll was filed in the office of the County Clerk of the County of Los Angeles.

That there is now at the date of this writ actually due on the Judgment, the aggregate sum of $1676.22 as principal and costs with interest thereon as provided by law.....

.....

Now you, the said Sheriff, are hereby commanded to satisfy the Judgment with interest as provided by law, clerk's accruing costs amounting to $1.00 and your costs and disbursements out of the personal property of said debtor..... or if sufficient thereof cannot be found, then out of the real property belonging to said debtor..... on the day whereon the Judgment was entered or at any time thereafter, make return of this writ within sixty days after your receipt hereof, with what you have done endorsed hereon.

Witness, the Honorable Presiding Judge of the Superior Court of the County of Los Angeles, attested by my hand and the seal of said Court this 13 day of May, 1929.

(Seal) L. E. LAMPTON, County Clerk,
JAH By H. A. DOYLE, Deputy.

[Writ of attachment and sheriff's return on execution, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Company et al., appears at pages 74 to 76. The sheriff's returns on attachment, which form a part of objectors' exhibit H, set out the items listed in the writ of attachment which appears at pages 74 to 76.]

Memorandum of Costs and Disbursements Claimed by Plaintiff.

In the Superior Court of the State of California in and for the County of Los Angeles.

Leonard Woodruff, Plaintiff, vs. Golden State Gem Co., a California Corporation, and Golden State Gem Co. of Nevada, a Nevada Corporation, Defendants.

* * * * *

Miscellaneous Items of Costs: .....

29 United States National Bank for storage on gems $150.00

$1451.40 Los Angeles, Cal., 5/18 1929

Received of

Wm. I. Traeger, Sheriff of Los Angeles County, Fourteen hundred and fifty one 40/*10* ..... Dollars, in United Staes Gold Coin, being the amount of sale of Res Prop in the case of Woodruff vs Golden No. 276469 Superior Court, County of Los Angeles, after deducting Sheriff's costs and disbursements, amounting to $48.60

J. A. COLEMAN,
Plaintiff's Attorney

Objectors' Exhibit JJ.

Cancelled by Judgment This 10 Day of May 1929. L. E. Lampton, County Clerk. By (Illegible signature), Deputy.

$500.00 Los Angeles, Cal., Jan 20, 1928

One Year after date, for value received, I, we, or either of us, jointly and severally promise to pay to the order of Alphonse Jeddis Company at Union Bank & Trust Co. of Los Angeles Five Hundred and no 100 ..... Dollars, with interest thereon at the rate of 6 per cent. per annum from date until paid; principal and interest payable in United States Gold Coin of the present standard of weight and fineness, or its equivalent. Interest payable at Maturity and if not paid when it becomes due, to be added to the principal and become a part thereof and bear interest

at the same rate. Upon default in payment of any installment or of interest, the whole shall become due at the option of the holder of this note. In case this note be not paid at maturity, I, we, or either of us, jointly and severally, promise to pay all costs of collection and reasonable attorney's fees:

GOLDEN STATE GEM CO.
W. C. SMITH, Pres.
C. E. BUCK, Secy.

Address 726 San Pedro St., Los Angeles, Calif. Phone Me-0318.

LEONARD WOODRUFF
2436 Inverness St. Los Angeles

[On reverse.]

$350.00 paid by Golden State Gem Co and $183.15 paid by Leonard Woodruff

HENRY HAYES, Attorney for
Alphonse Jeddis

Apr 9, 1929.
(Seal)

4/9/29 (Illegible) Int

Cancelled by Judgment This 10 Day of May 1929. L. E. Lampton, County Clerk. By (Illegible signature), Deputy.

$500.00. Los Angeles, Cal., Jan 20, 1928

Eighteen Months after date, for value received, I, we, or either of, jointly and severally promise to pay to the order of Alphonse Jeddis Company at Union Bank & Trust Co. of Los Angeles Five Hundred and no/100 ..... Dollars, with interest thereon at the rate of 6 per cent. per annum from date until paid: principal and interest payable in United States Gold Coin of the present standard of weight and fineness, or its equivalent. Interest payable at Maturity and if not paid when it becomes due, to be added to the principal and become a part thereof and bear interest at the same rate. Upon default in payment of any installment or of interest, the whole shall become due at the option of the holder of this note. In case this note be not paid at maturity, I, we, or either of us, jointly and sev-

erally, promise to pay all costs of collection and reasonable attorney's fees.

GOLDEN STATE GEM CO.
W. C. SMITH, Pres.
C. E. BUCK, Secy.

Address 726 San Pedro St. Los Angeles, Calif., Phone Me-03-18

LEONARD WOODRUFF
2436 Inverness St. Los Angeles

[On reverse:]

Paid in full by Leonard Woodruff Apr 9th 1929

HENRY HAYES, Attorney for
Alphonse Jeddis Co.

(Seal)

Woodruff vs. Golden State Gem Co.
276469

Plaintiff's Exhibit 1 Filed May 10 1929 L. E. Lampton, County Clerk By (Illegible signature) Deputy.

Objectors' Exhibit KK.

Complaint Promissory Note

In the Superior Court of the State of California in and for the County of Los Angeles.

Alphonse Jeddis and Frank L. Jeddis, co-partners doing business under the fictitious firm name and style of Alphonse Jeddis Company, Plaintiffs, vs. Golden State Gem Co., Inc., a corporation, Defendant.

Come Now Plaintiffs, and for cause of action against defendant, complain and allege as follows:

I.

That the plaintiffs are now, and at all the times herein mentioned were co-partners doing business under the fictitious firm name and style of Alphonse Jeddis Company, and have complied with the law relative to the filing and publication of fictitious firm name designation.

II.

That the defendant is a corporation, and at all the times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the City and County of San Francisco, State of California.

III.

That on or about the 15th day of October, 1926, the defendant made, executed and delivered to the plaintiffs herein that certain promissory note in words and figures as follows, to-wit:

"$2654.67 D 1959 Los Angeles, Oct. 15th, 1926.

Six months (without grace) we promise to pay to the order of Alphonse Jeddis Company Twenty six hundred and fifty four and 67/100 Dollars for value received; payable only in United States Gold Coin.

GOLDEN STATE GEM CO., INC.,
E. DAVOIL—Vice-Pres. (Sd)
C. E. BUCK—Treas. (Sd)

Payable at 726 Sa. Pedro St., No. 715 Due April 15th. 1927. 39484"

That nothing has been paid upon account of the same, except the sum of Five Hundred Dollars ($500.) April 22, 1927; the sum of One hundred fifty Dollars ($150.) June 20, 1927; One hundred Dollars ($100.) June 21, 1927; the sum of One hundred Dollars ($100.) August 5, 1927; and the further sum of One hundred Dollars ($100.) August 8, 1927; leaving a balance due upon said promissory note in the sum of One thousand seven hundred four and 67/100 Dollars ($1704.67).

IV.

That although said balance has been duly demanded, the said defendant has failed and refused, and still fails and refuses to pay said sum, or any part thereof, and there is now due, owing and unpaid from the defendant to plaintiffs herein the sum of One thousand seven hundred four and 67/100 Dollars ($1704.67), no part of which has been paid.

Wherefore plaintiffs pray judgment as follows:

(a) For the sum of One thousand seven hundred four and 67/100 Dollars ($1704.67), with interest thereon at the rate of seven percent (7%) per annum.

(b) For costs of suit.

HENRY HAVES
Attorney for plaintiffs.

[Verified.]

Judgment

Partly satisfied by Sheriff, 1/20/28—amt. collected $19.25 L. E. Lampton, County Clerk By A. R. Groenke, Deputy.

*Words and figures in italics appear in handwriting on original.

In the Superior Court of the State of California, in and for the County of Los Angeles.

Alphonse Jeddis and Frank L. Jeddis, co-partners doing business under the fictitious firm name and style of Alphonse Jeddis Company, Plaintiffs, vs. Golden State Gem Co., Inc., a corporation, Defendant. No. 235037.

The Above entitled cause came on regularly for trial in Department 7 of the above entitled Court, before Hon. Thomas C. Gould, sitting as judge of said department, on the 21st day of December, 1927, at the hour of 2:00 o'clock P. M. of said day, Henry Haves, Esq., appearing as attorney for plaintiffs, and John R. Barta, Esq., appearing as attorney for defendant, and evidence having been introduced on the part of plaintiffs, and counsel for defendant having stipulated in Open Court that the plaintiffs have judgment as prayed for in the Complaint, in the sum of One thousand seven hundred four and 67/100 Dollars ($1704.67) with interest thereon at the rate of seven percent (7%) per annum from the 30th day of September, 1927, amounting to the sum of Twenty-nine and 83/100 Dollars ($29.83), and the matter having been submitted to the Court for decision, and in accordance with the findings of fact and conclusions of law the Court orders judgment as follows:

It Is Hereby Ordered, Adjudged and Decreed that the

plaintiffs Alphonse Jeddis and Frank L. Jeddis do have and recover of and from the defendant the sum of One thousand seven hundred four and 67/100 Dollars ($1704.67), with interest thereon at the rate of seven percent (7%) per annum from September 30, 1927 amounting to the sum of Twenty-nine and 83/100 Dollars ($29.83), and plaintiffs' costs and disbursements taxed in the sum of $.....

THOMAS GOULD, Judge.

(Illegible signature) Jan 4, 1928

$19.25 Los Angeles, Cal., 1/20 1928

Received of

Wm. I. Traeger, Sheriff of Los Angeles County,

Nineteen 25/100.....Dollars in United States Gold Coin, being the amount of sale of personal property in the case of Jeddis vs. Golden, No. 235-037 Superior Court, County of Los Angeles, after deducting Sheriff's costs and disbursements, amounting to $5.75.

HENRY HAVES,
Plaintiff's Attorney.
By GEORGE W. ANNS.

No. 235-037.

Sheriff's Return on Execution.

State of California, County of Los Angeles, ss:

I, Wm. I. Traeger, Sheriff of the County of Los Angeles, do hereby certify that under and by virtue of the within and hereunto annexed writ of Execution by me received on the 10 day of Jan. A. D. 1928, I did on the 11 day of Jan. A. D. 1928, levy upon the personal property hereinafter described and noticed the same for sale as the law directs (by posting written Notice of the time and place of sale) particularly describing the property for six days successively in three public places in the Township or City where said property was sold, and on Fri. the 20 day of Jan., 1928, at 9 o'clock A.M. of said day, I did attend and offered for sale at

Public Auction, for United States Gold Coin, the property described.

1—strand of 88 beads:

50 white and green metal wedding rings

3 carved heads

2 pink stones

1 green stone cross

10 oval green stones

17 karats of blue stones (small)

6 karats of blue stones (large)

2 strands carved white beads

2 strands of large amber beads

10 white metal and white stone set rings

19 karats blue stones (cut).

At—Broadway Entrance to Courthouse, in the city and county of Los Angeles.

and sold the whole of the same in one separate parcels to Alphonse Jeddis and Frank L. Jeddis purchaser for the sum of Twenty-five Dollars in United States Gold Coin; said purchaser being the highest bidder and said sum being the highest bid, in the aggregate for the same. And I further certify that I deducted from the said sum of $25.00 my fees, commissions and expenses, amounting to the sum of $5.75 leaving a net balance of Nineteen 25 100 $19.25, which I have paid to Plaintiff's Attorney, whose receipt therefor is hereto attached, and I hereby return the annexed writ positively satisfied.

Dated Fri., this 20 day of Jan., A. D. 1928.

WM. I. TRAEGER,
Sheriff of the County of Los Angeles.
By GEO. S. BARTON,
Deputy Sheriff.

Sheriff's Office.

County of Los Angeles.

I, Wm. I. Traeger, Sheriff of the County of Los Angeles, do hereby certify that under and by virtue of the within and hereunto annexed writ of Execution, by me received on the 10 day of January, 1928, I did, on the 11 day of January, 1928, attach the following described personal property in the possession of E. Bastheim & Company but belonging to defendant, viz.: one sealed box of merchandise containing the following:

1 strand of 88 beads

50 white and green metal wedding rings

3 carved heads

2 pink stones

1 green stone cross

10 oval green stones

17 karats of blue stones (small)

6 karats of blue stones (large)

2 strands carved white beads

2 strands of large amber beads

10 white metal and white stone set rings

19 karats blue stones (cut)

All of said property located at fourth floor, Title Guaranty Building, Fifth & Broadway, in the City of and County of Los Angeles, State of California,

and attach the same by taking into my possession and putting a keeper in charge.

WM. I. TRAEGER, Sheriff.
By L. W. GRATZ, Deputy Sheriff.

Dated.....day of January, 1928.

Execution.

In the Superior Court of the State of California
in and for the County of Los Angeles.

The People of the State of California to the Sheriff of the County of Los Angeles, Greeting:

Whereas, on the 4th day of January, 1928, Alphonse Jeddis and Frank L. Jeddis, recovered a Judgment in the Superior Court of the County of Los Angeles against Golden State Gem Co., Inc., a corporation, for the sum of $1704.67, together with interest of $29.83 $..... costs and disbursements, which Judgment was docketed on the 6th day of January, 1928, entered in Judgment Book 676, at page 76; and the Judgment Roll was filed in the office of the County Clerk of the County of Los Angeles.

That there is now at the date of this writ actually due on the Judgment, the aggregate sum of $1734.50 as principal and costs with interest thereon as provided by law.

Now you, the said Sheriff, are hereby commanded to satisfy the Judgment with interest as provided by law, clerk's accruing costs amounting to $1.00 and your costs and disbursments out of the personal property of said debtor....or if sufficient thereof cannot be found, then out of the real property belonging to said debtor.... on the day whereon the Judgment was docketed, or at any time thereafter, make return of this writ within sixty days after your receipt hereof, with what you have done endorsed hereon.

Witness, the Honorable Presiding Judge of the Superior Court of the County of Los Angeles, attested by my hand and the seal of said Court, this 10th day of January, 1928.

L. E. Lampton, County Clerk.
(Seal) By I. Fuxder Burgh, Deputy

Objectors' Exhibit I.I.

Complaint for Damages, Fraud and Conversion.

In the District Court of the United States, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al., defendants. No. 5587-J.

Plaintiff above named complains of defendants above named, and each of them and for cause of action alleges that:

[Paragraphs I to XV(2) are substantially identical with those paragraphs of the complaint in case No. 7256-C, United States District Court, Southern Distret of California, Heiser v. Woodruff et al., which complaint appears at page 45.

[The first paragraph of paragraph XV(2) is substantially identical with that paragraph of the complaint in case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., which complaint appears at page 45.]

That on or about the 19th day of April, 1929, and at the time of filing of said action of Woodruff vs. Golden State Gem Company of California, et al, No. 276469 Superior Court, the said defendant J. Coleman acting for and in behalf of the said Leonard Woodruff and with his full knowledge and consent and at his direction and request and as part of the said conspiracy and scheme of the said defendants to obtain the property of the plaintiff herein, the said Coleman did at the said request, instance, direction and upon the said instructions of defendant Woodruff, swear and subscribe to an affidavit on the 19th day of April, 1929, that he was attorney for the said defendant Woodruff and that the said Golden State Gem Company of California and the Golden State Gem Company of Nevada were indebted to the plaintiff upon the said notes aforementioned, and that the payment of the same had not been secured by any mortgage or lien upon personal property or any pledge of personal property, which said affidavit was used as a basis with the said complaint aforementioned to attach the said property of plaintiff herein and as part of the said scheme of conspiracy to obtain the same for said Woodruff. That at the

time of making of said sworn statement, and affidavit, the said defendants and each of them well knew that defendant Woodruff had in his possession and under his control collateral to the value of $2,000.00 pledged as security for the payment of the said notes, and which jewelry and merchandise had been obtained by the said defendant Woodruff and Coleman as security for the payment of the said notes, and no foreclosure proceedings of whatsoever nature had been had and the said merchandise and collateral was at that time and ever since said time as plaintiff is informed and believes and therefore alleges been held by the said Woodruff and his said agent and attorney defendant Coleman. That the said defendants further acting fraudulently and deceitfully and for the purposes hereinabove alleged, did conspire and scheme between themselves that the complaint and summons in the said last mentioned action should be served upon defendant Smith as President of the said Golden State Gem Company of California and as President of the Golden State Gem Company of Nevada, and that the said defendant Smith should default thereunder and should not answer the said complaint, or the said complaint and summons hereinbefore mentioned, for which this plaintiff is informed and believes and therefore alleges said defendant Smith was to receive a remuneration of Ten Thousand ($10,000.00) Dollars and certain oil leases in Oklahoma. That said defendants Woodruff and Coleman well knowing that the said raw gems aforementioned and described in Paragraph VI and deposited in the said United States National Bank as aforesaid were the property of the plaintiff herein, did cause the said raw *gems*, the property of plaintiff herein, and all thereof then in the possession of the said United States National Bank as aforesaid, to be attached under the said action on the 19th day of April, 1929.

[The remaining paragraphs of XV(2) are substantially identical with those paragraphs of the complaint in case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., which complaint appears at page 45.]

[Paragraph XVI is substantially identical with that paragraph of the complaint in case No. 7256-C, United States

District Court, Southern District of California, Heiser v. Woodruff et al., which complaint appears at page 45.]

XVII.

That defendants Woodruff and Smith since May 13, 1929, have been outside of the State of California and outside the jurisdiction of this Honorable Court for a period of three months and more, as plaintiff is informed and believes and therefore alleges. That plaintiff herein discovered the fraud herein in and about the month of April, 1932, in that plaintiff at said time discovered how and in what manner the raw gems of plaintiff herein had been removed and obtained by defendants.

[Paragraphs XVIII to XX are substantially identical with those paragraphs of the complaint in case No. 7256-C, United States District Court, Southern District of California, Heiser v. Wodoruff et al., which complaint appears at page 45.]

For a Second, Separate and Further Cause of Action by Plaintiff Against Said Defendants and Each of them, Plaintiff Alleges That:

I.

Plaintiff reincorporates and realleges each and every allegation, matter of fact contained in Paragraphs I to XX, inclusive, of his first cause of action.

II.

As a direct and proximate result and consequence of the fraudulent and deceitful conduct of said defendants as hereinbefore alleged, and in consummation of their said fraudulent conspiracy, the said raw gems of plaintiff aforesaid, were seized by defendants and so were lost to plaintiff herein to his great damage in the sum of one hundred sixty-four thousand ($164,000.00), dollars.

III.

And further, as a direct and proximate consequence of the fraudulent and deceitful acts and conduct of the defendants, as hereinbefore alleged, plaintiff lost valuable rights and profits on the said leases aforesaid in the sum of one hundred thousand ($100,000.00) dollars.

[Paragraph IV is stricken from the certified copy of objectors' exhibit LL.]

For a Third, Separate and Further Cause of Action by Plaintiff Against the Said Defendants and Each of Them Plaintiff Alleges That:

I.

Reincorporates and realleges each and every allegation, matter of fact contained in I to III inclusive, of his second cause of action.

[Paragraphs II to IV are substantially identical with those paragraphs of the complaint in case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., which complaint appears at page 45.]

[Verified.]

Filed May 11, 1932, R. S. Zimmerman, Clerk. By Edmund P. Smith, Deputy Clerk.

A True Copy, Attest, etc. Oct. 8, 1940. R. S. Zimmerman, Clerk U. S. District Court, Southern District of California. By C. C. Hollister, Deputy.

Objectors' Exhibit MM.

Order Re Motion to Vacate Judgment.

United States District Court, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff et al, Defendants. No. 5587 J.

Plaintiff filed his complaint on May 11, 1932, wherein he sought judgment against a number of defendants on account of an alleged fraud involving the conversion of property. On the same day a praecipe was filed with the clerk for the issuance of summons and summons was accordingly issued. No other action on the part of the plaintiff to prosecute his cause is shown on record as for the year following: On June 12, 1933, pursuant to provisions of the last paragraph of Rule 4 of this Court, the Clerk placed the matter on the calendar for dismissal and judgment of dismissal was entered

on June 13, 1933. Ten months later (two term dates having passed in the interim) plaintiff presented his exparte motion to vacate the order of dismissal and filed an affidavit in connection therewith made by a Deputy Marshal. The affidavit showed that the Marshal's office had received the summons in May, 1932, and had made numerous attempts to serve the defendant Woodruff and had failed to secure service, the information contained in the affidavit indicating that said defendant was concealing himself to avoid service. The affidavit concluded with the statement that it would be useless effort on the part of the Marshal's office to make further attempts to serve the defendant and suggested that plaintiff obtain an order authorizing a private person to make the service. While it is not important to the law question presented for consideration at this time, it may be observed that the plaintiff did not make any further attempt to serve the defendant Woodruff for more than a year after the order was made vacating the judgment of dismissal. The record shows that it was only on May 28, 1935, that order of the Court was applied for and secured permitting the service of summons to be made by a private individual.

Defendant Woodruff now moves to vacate the order of April 25, 1934, which purported to set aside the Dismissal of the cause as made under the provisions of Rule 4 on June 13, 1933. Defendant contends that as the judgment of dismissal was final in form, the court had no jurisdiction to vacate it after the term had passed, citing particularly the case of Dillon vs. U. S., decided by the Ninth Circuit Court of appeals and reported in 29 Fed. (2d) p. 246. The position taken by the plaintiff is that the court when it entered the dismissal under Rule 4 acted through a mistake of fact: that had the court been advised that efforts had been made to serve the summons on Woodruff without success and that such efforts had been repeated and persistent, the dismissal would not have been ordered.

The rule of Court (Rule 4) provides:

"Causes which have been pending in this court for more than one year without any proceeding have been taken there (in) during such year, may be dismissed for want of prose-

cution, by the court on its own motion, at a calling of a calendar prepared for the purpose of the Clerk."

It will be noted that the court in making a dismissal under the rule mentioned acts upon the record before it and that that record in order to bar dismissal contemplates that there shall have been some proceeding taken in court during the year. There was no proceeding taken in court in this case. There are a number of defendants mentioned in the caption all charged jointly with the defendant Woodruff and none of them were served with a summons; neither does it appear that there was any effort to make such service. Members of the bar of the court are required to take notice of the rule and to assume that dismissal will follow as a consequence upon the record showing no action in a cause for the time specified. Even though the fact had appeared that efforts had been made to serve one defendant only and that such effor had failed, the court would not necessarily have withheld its order of dismissal. The dismissal even in that case would have been in strict conformity with the rule.

The case of Dillon vs. U. S., supra, is quite exactly in point, as counsel for defendant Woodruff contends. There a summons had been issued and no further proceedings appearing of record for one year following, dismissal was ordered under a rule of the Northern District of California, which is in terms precisely like that included in Rule 4 of this court. The plaintiff in a term of court subsequent to that wherein dismissal was ordered moved to vacate that order. It was shown that the summons was not returned because there had been negotiations with counsel for the United States and certain stipulations between counsel as to time to answer; that the parties were awaiting the determination of some other case then on appeal which involved similar questions. The trial court denied the motion to vacate the judgment of dismissal and the Court of Appeals affirmed that order, reaffirming the established rule that a judgment final in form when once entered may be vacated or modified only during the current term of court: The court there stated:

"Rule 76 is intended to confer upon the court the power to clear its calendar of cases which are not diligently prosecuted. It would be futile, if the exercise of such power were

dependent or conditioned upon the desires of counsel for litigants. The court may ignore stipulations of record, and a fortiori mere oral understandings of counsel."

In that case it might be said that there was ample excuse in favor of the plaintiff for not having taken further proceedings in court. He relied upon the stipulation of Government's counsel and that counsel joined with him in consenting to have the dismissal set aside. All of this was of no avail; the term had passed and the jurisdiction of the court was lacking to make a vacating order. The decision is controlling of the question now presented. It follows that the order of April 24, 1934, vacating the judgment of dismissal entered June 13, 1933, must be set aside because of lack of jurisdiction in the court to make such order. It likewise follows that the service of summons on defendant Woodruff as it has recently been made must be quashed.

It Is So Ordered and an Exception Is Noted in Favor of the Plaintiff.

Dated July 9, 1935.

WM. P. JAMES,
U. S. District Judge.

Filed July 9, 1935. R. S. Zimmerman, Clerk. By Murray E. Wire, Deputy Clerk.

Objectors' Exhibit NN.

Reporter's Transcript of Proceedings in Re: Objection to Claim of M. E. Heiser.

In the District Court of the United States, Southern District of California, Central Division.

Before Hon. Earl E. Moss—Referee.

In the Matter of Golden State Gem Company, Bankrupt. No. 13393-J.

Los Angeles, California. Wednesday, April 14, 1932. Friday, April 22, 1932

Appearances: Robert L. Beveridge, Esq., for Hubert F. Laugharn, Esq., Trustee. Francis B. Cobb, Esq. and Ed

ward Fitzpatrick, Esq., for Leonard J. Woodruff, Creditor. Leonard J. Meyberg, Esq., for the Claimant, M. E. Heiser.

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* * * * *

M. E. HEISER, called as a witness on invitation of the Referee, being first duly sworn, testified as follows:

Direct Examination.

By the Referee:

Q. You are the claimant in this matter?

A. Yes, your Worship.

Q. Now, will you start with your first negotiations for the delivery of these sapphires and zircons—what was it, sapphires entirely?

A. No, sapphires and opals and jades, your Worship.

The Referee: Relate just what occurred?

A. Starting in July, 1928, I came to the Golden State Gem Company of California and I met Mr. Calvin Smith. I just arrived from Australia, your Worship, had been out on a three-year mining campaign and I asked Mr. Smith was he in the market for any gems.

Q. That was in the place of business of the Golden State Gem Company?

A. Yes, and I sold him—

Q. And what did he say when you asked if he was in the market?

A. He said he was in the market and he said he could not purchase them, he didn't have the money, he didn't have the cash but he said his backer would if I went with him to his place, and we went to Mr. Woodruff's home and I showed Mr. Woodruff the gems Mr. Smith had selected from my various parcels—

Mr. Meyberg: Pardon me. Those are not the gems in controversy?

A. No. His Worship asked me to tell what happened.

Mr. Meyberg: I just wanted him to understand that.

A. I went up with Mr. Smith and showed the gems to

Mr. Woodruff and Mr. Woodruff said they were fine and good and could be used in some partnership arrangement they had. I was not interested in that. I was more interested to get my money. I sold the stuff and got the check from Mr. Woodruff for it. Then Mr. Smith told Mr. Woodruff, said I had just come from Australia and we were discussing the matter and I told him of the sapphires which I had already in the vault in San Francisco, which had just arrived. Mr. Woodruff was very much interested and Mr. Smith said "You know with your money and my 2,000 customers, which are some of the richest men in America, and with Heiser's stock here we could make a wonderfully-fine business," and that was what I was looking for because I was a rough producer. Mr. Woodruff said he thought it was a good idea and would like to see the gems if I would bring them up. After several days going back and forth he asked me to go down and see a lawyer of Mr. Smith's Mr. Beveridge, in Rohe and Freston's—

Mr. Meyberg: Mr. Beveridge, you say?

A. No, Mr. Barstow, pardon me, I am awfully sorry. Mr. Barstow checked me up on my past credentials, writing up to my references and getting information on my mine in Australia. After Mr. Barstow was satisfied he apparently communicated with Mr. Smith who in turn took me to Mr. Woodruff. He was apparently satisfied. He said "There is a company being operated, the Golden State Gem Company of California," and Mr. Woodruff said "All right, if you will place the gems up into the Golden State Gem Company and Calvin Smith is satisfied with them I will pay up the debts of the Golden State Gem Company of California, all debts and I will put Mr. Smith back on his feet again, and I will also"—

The Referee: Smith was there all the time?

A. Oh yes, all the time then.

Mr. Beveridge: I move the portion of the witness' testimony with reference to what Mr. Woodruff said be stricken as purely hearsay.

The Referee: Not in the presence of Mr. Smith?

The Witness: Mr. Woodruff was there.

The Referee: It is not hearsay.

Mr. Beveridge: It is hearsay in so far as no proper foundation is laid showing Mr. Smith; it is indefinite as to time and place.

The Referee: That is true of course, but we are just saving time by calling Mr. Heiser at this time.

A. It was on or about the 30th of July, 1928, your Worship.

The Referee: All right, proceed.

A. I can give you the exact date.

Mr. Meyberg: Mr. Heiser, all right, go ahead.

A. Well, Woodruff emphasized to me Mr. Smith would be put on his feet again and he told me, "Mr. Heiser, if you fetch those gems up I will put Mr. Smith on his feet and pay all the debts of his company."

Mr. Beveridge: I move to strike that out.

The Referee: Yes.

A. And he said all of Mr. Smith's debts also because he liked Calvin and because he thought he was a wonderful fellow, a good business man, and he thought with him and my gems we would make a very strong organization, and I would have no more trouble on the end of getting a distribution of gems.

I brought the gems up and they left San Francisco on or about the 9th of August. They arrived in this city and were transferred into the United States National Bank on the 13th of August, with Mr. Smith to have access to them, myself, and if Mr. Woodruff needed he could have access to them in the name of the Golden State Gem Company of California, your Worship. The other company was not formed at that date.

Mr. Woodruff and I and Mr. Smith met the next day and Mr. Woodruff said "Mr. Heiser, you have kept your deal and all the debts of the California Company are cancelled

and here is a check to show I am going to play with you boys," and he gave Mr. Smith some checks for $9,000 to pay all the debts of the company, and Mr. Smith received those checks for the express purpose of paying all the California Company debts so the California Company was free of its debts.

The Referee: What is your conclusion.

A. No.

Q. Well, what did he say?

A. He said "I will clear all the debts of the California Company and we will put all the assets of the California Company into the Nevada Company." For his consideration he was to get two-thirds of Mr. Smith's shares, or led me to believe he had in the company and I was to get the other. Mr. Smith and he was to be fifty-fifty on one end of the company and I was to be the other half on the new application or in the new Nevada Company.

Mr. Barstow then proceeded to get the papers on from Nevada and I think they arrived on the 15th, a few days after the gems arrived. Nothing was consummated until I placed my gems in the California Company name in the United States National Bank on Eighth and Spring Street, your Worship.

The Referee: Now, did you have any written transactions with Mr. Smith or Mr. Woodruff, in writing?

A. I couldn't say how many documents there were prepared I signed, but Mr. Smith kept one set and Mr. Barstow or Mr. Woodruff got the other. I didn't take them because I was on my way to Europe. I left for Europe just after that and I didn't know what happened until I got there and I was making an arrangement for the getting of the rough material for the Golden State Gem Company.

Q. You signed a number of papers but you do not have copies of them?

A. No. Mr. Smith was looking after that end, and Mr. Barstow had the rest on file.

Q. Well, when you brought those stones up here you put them over in the United States National Bank. Was

the box under joint control or individual control of any of you three gentlemen?

A. Each one had access to it, and it was in the name of the Golden State Gem Company.

Q. And it was individually controlled for yourself, Woodruff or Smith?

A. Yes. They was supposed to be my property until they were turned over to the Nevada Company. The only thing I was to receive for my stock of gems was shares in the Nevada Company but there was nothing ever passed to the Nevada Company, your Worship. They kept everything to themselves and they gave me paper in a worthless company that never functioned.

Q. And did they give you the stock in the Nevada Corporation?

A. Some shares, yes, in the Nevada Company. Not all of it.

Q. What became of these stones?

A. Mr. Woodruff took them, your Worship, from the bank on one of the debts he was supposed to pay and he gave Mr. Smith the money in my opinion to pay it. He gave Mr. Smith $9,000 odd to pay the debts and when I came back I found my gems were taken out of there to apply on debts Mr. Smith should have paid. I didn't know until last week when Mr. Meyberg, the attorney, told me, and they didn't seem to make any progress in it. Not until Mr. Meyberg went into investigating in the Hall of Justice last week did I know.

The Referee: Mr. Woodruff sued you?

A. No.

Q. He sued the Nevada Company?

A. The California and Nevada Company, your Worship, I think—I am not positive. I just glanced over the record. It is yonder there.

Mr. Meyberg: May it please the Court, I have the file in that case. Perhaps the Court could read this whole complaint and better understand the whole picture. It is very interesting.

Mr. Beveridge: It is stipulated between counsel that

that file shows the manner in which the property went out of the possession of the United States National Bank?

Mr. Meyberg: I couldn't say as to that. I will stipulate that file may go in evidence.

The Referee: The complaint first alleges and shows on the face of it the default of the Golden State Gem Company of California and the Golden State Gem Company of Nevada. It shows the execution of some promissory notes signed by the Golden State Gem Company in favor of Jeddis, each for $500, signed by Leonard Woodruff also.

Mr. Meyberg: May it be noted the one note of $500 is dated January 20, 1928 and was not due until eighteen months after date, or on July 20, 1929, but the suit was filed in April, 1929, and the default judgment was taken in May, 1929.

The Referee: Yes, and the interest is payable at maturity.

Mr. Meyberg: At maturity. Further, may it please your Honor, if I may call your attention to paragraph eight on page four of that complaint, which is the only allegations in which they attempt to tie into the company.

The Referee: Yes. It shows in the file among other things, the levying of a writ of attachment on April 19, 1929 on 4,000 pounds more or less of rough sapphire stones and 1,000 ounces more or less of zircon stones, located in the United States National Bank at 758 South Spring Street, Los Angeles, California.

Mr. Beveridge: Is that an execution or attachment?

The Referee: The document just read is the attachment. Here is a return on execution dated May 18, 1929 certifying that on that date there was sold 35 sacks said to contain uncut sapphires, sold to Leonard Woodruff for the sum of $1,000 at Los Angeles Warehouse, 316 Commercial Street, in the City and County of Los Angeles.

Mr. Meyberg: Apparently to where it was removed.

The Referee: One sack said to contain uncut sapphires sold to Irving Zachs for $150 at the same warehouse. I

don't see anything further material about this file. There may be, however.

Mr. Meyberg: I will leave that.

The Referee: That is all the questions I have.

Mr. Beveridge: Are you satisfied with the general statement, Your Honor?

The Referee: I am not expressing any opinion on the evidence. You may cross examine, or his own counsel may examine him first.

Mr. Meyberg: I would like to examine him but possibly it would save time by examining him after Mr. Beveridge is through.

Mr. Beveridge: I would like to cross examine him, your Honor.

The Referee: Proceed, Mr. Beveridge.

Cross Examination.

By Mr. Beveridge:

Q. Mr. Heiser, you stated that your first notice that these gems were not in the possession of the United States National Bank was through your present attorney?

A. I didn't say that at all. I said the first notice I had or knew what had happened to those gems was through my attorney when he went to the Hall of Records and found what happened to them.

Q. Did you confer with an attorney named Leo Goodman with regard to this?

A. Mr. Smith took me to this attorney, Mr. Leo Goodman, and he wanted me—

Q. Pardon me, but—

A. You asked me and I am answering. Don't confuse me. They wanted this gentleman to get forty per cent and they wanted more cash and I couldn't pay them. They billed around $1200. Now, you wanted to know and I have it in writing.

Q. Did you understand my question?

A. Yes, and I answered it.

Q. Did you ever propose to file suit against Leonard Woodruff on this claim?

A. I never proposed anything.

Mr. Meyberg: That is calling for the conclusion of the witness.

The Referee: Yes, the expression "propose to file suit" does call for the conclusion of the witness.

Mr. Beveridge: Q. Did you ever employ counsel to bring suit on this claim?

A. Not to file suit, no. I asked him to try and see what my position was in the case.

Q. And at that time that was the first part of this year or last year?

A. Last year, yes sir.

Q. Did you make a statement of the facts to your counsel in my presence?

Mr. Meyberg: Just a minute. That is objected to as being incompetent, irrelevant and immaterial, may it please the Court, and also a privileged communication.

The Referee: This is preliminary now, if he made the statement. After that is ascertained then before he goes into the question of what the statement was you may make your objection.

A. I discussed with you or Mr. Cohen of San Francisco and Mr. Goodman several things pertaining to both this bankruptcy suit which you gentlemen led me to believe I had a claim in, and also told me I had a big suit against Mr. Leonard Woodruff.

Mr. Beveridge: If you will confine your answers to my questions, Mr. Heiser. You understood the question. Will you read the question to Mr. Heiser so he will understand it?

(The reporter read the pending question as follows: "Q. Did you make a statement of the facts to your counsel in my presence?")

A. Yes I did, sir.

Q. And was that statement taken down by his secretary in shorthand?

A. Not to my knowledge.

Q. Did you ever see a reproduction of that statement written up?

A. Not that I recollect.

Q. Do you recollect ever having asked Mr. Goodman to have me furnished with a copy of that by you?

A. I do not. Mr. Cohen might have had, my lawyer in San Francisco.

Q. Well, I will ask you to examine this document here which consists of eight pages of typewritten matter, statement of Mr. Heiser

Mr. Meyberg: Pardon me. May I see the document you are going to present to the witness?

Mr. Beveridge: I am just asking him a question before I offer it.

Mr. Meyberg: I would like to see it before that.

Mr. Beveridge: Very well.

Mr. Meyberg: What is the question?

Mr. Beveridge: Asking him to examine this carefully and state if he is able to at this time according to his best independent recollection if that is a copy of a statement that he made at the time in question.

Mr. Meyberg: Objected to as being incompetent, irrelevant and immaterial, not the proper way to impeach the witness if it was a communication passed between the client and counsel establishing a privileged communication.

The Referee: Thus far he is only asking to identify it and the question is preliminary.

A. No, I cannot identify this. I cannot identify this document at all.

Mr. Beveridge: Nothing that is stated in there was said by you at that time?

Mr. Meyberg: Just a minute—

A. Well, no.

Mr. Meyberg: —that is objected to as incompetent, irrelevant and immaterial, no foundation laid and a privileged communication between client and counsel.

The Referee: Sustained on the ground there is no foundation laid, the witness having failed to identify the document.

A. I cannot identify that document, your Worship. Did Mr. Smith's lawyer write it up?

Mr. Beveridge: No, your lawyer I guess wrote it up.

Mr. Meyberg: I move to strike the statement of Mr. Beveridge.

Mr. Beveridge: It is an answer to the witness' question.

Mr. Meyberg: As immaterial and not proper conduct.

The Referee: It is not evidence anyway. Stricken out.

Mr. Beveridge: Q. Now, Mr. Heiser, you stated that the gems you furnished were to be your property until you got your stock in the new company?

Mr. Meyberg: What is the question?

(The reporter read the pending question.)

Mr. Beveridge: Is that a fact?

Mr. Meyberg: That is assuming a fact not in evidence. The witness did not so state. The witness stated he deposited these gems to show good faith and Mr. Woodruff was to put up the money.

The Referee: The question is not cross examination and it is not proper to reiterate the witness' statement.

Mr. Beveridge: I was laying the foundation for further questions.

The Referee: Objection overruled.

A. What is the question again?

(The reporter read the pending question as follows: "Q. Now, Mr. Heiser, you stated that the gems you fur-

nished were to be your property until you got your stock in the new company?"

A. Yes.

Mr. Beveridge: Q. And where were you when this property was shipped to Los Angeles?

A. In Los Angeles.

Q. Who handled the consignment and shipment?

A. My brother-in-law, E. A. Lobree.

Q. Under instructions from you?

A. Yes.

Q. What were your instructions with reference to how it was to be consigned?

A. To M. E. Heiser, care of Golden State Gem Company.

Q. Were you in Los Angeles and received it?

A. I was.

Q. At that address?

A. No, we received it at the United States National Bank, Spring Street.

Q. Then what happened?

A. They were taken down to the bank and Mr. Smith inspected them.

Q. You inspected them?

A. Mr. Smith and I, and they were just left there for safe keeping in the vault.

Q. Under whose name?

A. Golden State Gem Company.

Q. Of Nevada?

A. No, sir. The Nevada Company wasn't formed then. There was no such thing as the Nevada Company at that date.

Q. Do you know whether or not the Golden State Gem Company of Nevada had an account in the United States National Bank?

A. At a later date.

Q. At that time?

A. At that time to my own knowledge it did not.

Q. You are quite positive?

A. As positive as I can be.

Mr. Meyberg: He has stated—

Mr. Beveridge: You just testified it was the old company. Now, I want to know what he bases his answer on.

Mr. Meyberg: I move to strike the answer on the ground it is purely a conclusion of the witness and not the best evidence.

The Referee: Motion denied.

Mr. Beveridge: Q. Was the new company formed when this merchandise was shipped?

A. No, when the stuff was shipped the company was not formed. The papers were not even sent away then. The company was formed on the 11th of August and the stuff was shipped on the 9th day of August.

Q. When was it received?

A. On the 13th day of August.

Q. Well, the company was formed then?

A. On the 15th, but the stuff—

Q. When was it received?

A. The stuff was in the bank on the 13th.

Q. Pardon me?

A. The gems were in the bank on the 13th.

Q. And that is when the company had been formed, on that date?

A. No, the papers of the company were not down here or were not satisfactory to the lawyers, to Mr. Barstow's knowledge or satisfactory until the 15th day when we received them.

Q. Then when the property was actually deposited in the bank in their care as custodian it was there as your property?

A. Yes.

Q. And when the company was formed it became the property of the Golden State Gem Company of Nevada?

A. Not at all. Not until all the assets of the Golden State Gem Company of California were transferred free and clear of all encumbrance.

Q. That was your agreement with Mr. Woodruff and Mr. Smith?

A. Pardon me, yes.

Q. And that agreement was never performed by either one of the three of you?

A. I put my gems in.

Q. You furnished your gems, you did your part of it?

A. Undoubtedly.

Q. How soon after that did you go to Europe?

A. I left for Europe the early part of September.

Q. And before going did you sign any stock certificates as secretary of the new company?

A. Mr. Barstow said he thought it would save a lot of time if I would sign them right now, and then he asked — well, he asked me to then and I was to retire in favor of Miss Bohn as secretary—I am not positive *or* her name. He said "You can sign these and you don't need to worry, Mr. Woodruff will attend to all money and matters and it will save"—

The Referee: Who was Mr. Barstow representing?

A. The Golden State Gem Company of California. He was also the lawyer who formed the first company.

Mr. Beveridge: Q. Was he with the Golden State Gem Company of Nevada, if you know?

A. He was the Golden State Gem Company of California's lawyer and I understand he was looking after all their books and all their business, your Worship.

Q. Were you ever in his office when he conferred as one of the Board of Directors of the Golden State Gem Company of Nevada?

A. Oh yes, on several occasions.

Q. He represented you gentlemen in the formation of the Golden State Gem Company of Nevada, is that the fact?

A. In the formation of this company I didn't have anyone representing me.

Q. Pardon me, Mr. Heiser. I said you gentlemen, not just you alone.

A. For the formation of the Nevada Company Mr. Smith and Mr. Woodruff had a little uncertainty which lawyer they should choose, whether Mr. Coleman or Mr. Barstow and there was a little confusion over it and finally they decided on Mr. Barstow.

Q. Isn't it a fact, you favored Mr. Barstow, you had confidence in him?

A. Mr. Barstow seemed to impress me he could get a lot of money and told me he could get money in big quantities, and I thought he could.

Q. And you relied on that?

A. Yes, and Mr. Smith and Mr. Woodruff on the other end. Money was the only thing we needed.

Q. Then, as attorney for the Golden State Gem Company of Nevada, he advised you before you left for Europe to sign the stock certificates as secretary of the corporation?

Mr. Meyberg: That is objected to as calling for the conclusion of the witness, purely hearsay, and no foundation laid.

Mr. Beveridge: Preliminary, your Honor.

Mr. Meyberg: As to who Mr. Barstow represented when he asked him to sign the document. Mr. Barstow would be the man to testify to that.

The Referee: Objection overruled.

(The reporter read the pending question.)

A. He asked me to sign the stock certificates so he—

Mr. Beveridge: Pardon me. That is all.

A. Pardon me, your Worship.

Mr. Beveridge: Well—

The Referee: Just a minute, please, gentlemen.

Mr. Beveridge: Pardon me.

The Referee: Mr. Heiser, when you finish answering a question don't enter into a long argument but stop there, and when counsel desires to interrupt you wait and see what objection he has and if it is proper for you to continue with your answer you will be permitted to do so, but the mere fact you have started an answer does not give you the floor to go on and finish anything you start like you would in a Parliamentary speech. Now, where were we?

Mr. Meyberg: May it please the Court, I suppose the witness was explaining an answer there and I would like to have him have the opportunity of finishing.

The Referee: Read the question.

(The reporter read the pending question as follows: "Q. Then, as attorney for the Golden State Gem Company of Nevada, he advised you before you left for Europe to sign the stock certificates as secretary of the corporation?")

The Referee: I don't see any explanation is necessary to that. The question may be answered by yes or no. If there are any other additional matters you wish to develop on cross examination, that may be done. It is true, a witness may explain his answer if the nature of the question is such that the answer is one that requires explanation, but in the guise of explaining an answer he cannot go ahead and talk just as long as he wants to.

Mr. Beveridge: Q. Now, Mr. Heiser, as the result of that advice from the attorney for the corporation do you recall how many stock certificates you signed as secretary?

Mr. Meyberg: Just a minute. That is calling for the conclusion of the witness and I think is misleading the witness. He asks as the result of that advice.

The Referee: Yes, objection sustained. If you want to ask how many certificates he signed you can do that.

Mr. Beveridge: Q. Do you remember how many certificates you signed?

A. No, I am not sure. A few. It wasn't a terrible lot.

Q. There were only three stockholders, were there not?

A. No, there were more than three stockholders, Mr. Smith and Devall and Mr. Doctor Lawrence Smith. He received shares.

Q. Do you recall how many shares of stock were issued to Mr. Smith?

A. It was something a little over—

Mr. Meyberg: I object as calling for the conclusion of the witness, purely secondary evidence. The record will speak for itself, unless he is just testing the memory of the witness. I don't know whether the witness remembers or not.

The Referee: Objection overruled.

(The reporter read the pending question.)

A. No, I don't.

Mr. Beveridge: Q. Do you recall how many shares you issued to yourself?

A. No, I don't.

Q. Do you recall how many shares you issued to any stockholders?

Mr. Meyberg: That is objected to as calling for the conclusion of the witness, and again the witness could not remember as to how many he issued. There is nothing in evidence to show he issued any stock even.

Mr. Beveridge: Pardon me. I will correct the question to read, do you recall how many certificates you signed as secretary? That is my original question.

A. No, I don't.

Q. You don't recall how many certificates you signed as secretary for any of the stockholders of the company?

A. No.

Q. But you do recall you signed a number of certificates as secretary?

A. When Mr. Barstow presented shares for my signature I always signed them, thinking they were all right.

Q. You never examined the amount on the certificates?

A. No, Mr. Barstow made out the certificates in his handwriting, if I remember correctly.

Q. The ones you took for yourself, what did you do with them?

A. I have them here, in the city.

Q. Would you be able to produce them in accordance with the demand that has been served upon your attorney to produce any and all documents?

A. Oh, I think so.

Mr. Meyberg: What is that, the demand you mean that you gave me in the court room this morning?

Mr. Beveridge: Yes. If that demand does not cover it, your Honor, I would like to have an order from the bench those stock certificates be produced, being very material.

Mr. Meyberg: Find out if the witness has them.

Mr. Beveridge: He stated he had them in Los Angeles.

The Referee: Where are the stock certificates?

A. I have some here, sir.

Q. Some in the court room?

A. None in the court room; some in San Francisco and some in London but I have receipts in the bank for those in London, your Worship.

Q. And where are those certificates?

A. Some are here and some in San Francisco and some in London, or on the way.

Q. The records you have here, where are they here in Los Angeles?

A. They are—my lawyer has a few of the records.

Q. Here in the court room?

A. You see, your Worship, I was trying to explain, when you said I was giving a Parliamentary speech, Mr. Barstow took two lots of stock and he said something about a pooling arrangement and he put them in the bank. I don't know where they are. I never saw the stock. I might have signed them. I am not positive. But Mr. Smith and Mr. Barstow put them in the bank.

Mr. Meyberg: Did you say I had the stock certificates?

A. No, I did not. They are over at the bank.

The Referee: Do you know what bank they are in?

A. I am not positive, no, not without refreshing my memory, but Mr. Smith must know.

Q. You don't have any of those stock certificates in your own individual possession?

A. No, sir. They know where they are, your Worship.

Mr. Meyberg: Did you ever have those stock certificates in your possession?

A. No. They were put in the bank. Mr. Smith and Mr. Beveridge put them in the bank.

Mr. Beveridge: You mean Mr. Barstow?

A. Pardon me, yes.

Q. The ones in San Francisco, are you able to recall how many you left in San Francisco?

A. No, I couldn't tell you exactly how many I had there.

Q. The ones you left in Europe, how many did you leave in Europe?

A. I have them in the bank, I have the bank receipt for them here. I am not positive whether it is here or San Francisco, but they are in safe keeping. They are only a few, not more than seven certificates.

Q. You had seven certificates issued to you?

A. Oh, I had several. I couldn't tell you exactly.

Mr. Meyberg: Several or seven?

Mr. Beveridge: Several certificates covering his share.

Q. Well, when you took your stock with you did your take all that was issued to you or just a portion of it?

A. No, I didn't take all of it by any means, because the majority was here locked up as I said a moment ago, locked up in a bank here.

Q. And it is over in the United States National Bank, now?

A. I don't recall which bank.

Q. Whatever it was you left there?

A. I don't know. I left the gems there and they took them out, and whether they took the shares or not, I don't know.

Q. Whatever you left is in the United States National Bank?

A. That I don't know.

Mr. Meyberg: That has been already asked and answered.

A. I don't know where they are.

The Referee: The last time you saw them they were in the United States National Bank?

A. They were in one of the banks, your Worship.

Q. But you don't know whether it was the United States National Bank or not?

A. No.

Mr. Beveridge: I guess that is all. Oh, just a minute.

I hand you what appears to be an original bill of lading, and I will ask you to state if that is the bill of lading that covers the consignment of the merchandise in question?

A. Yes, I think that is the bill of lading. It is in my brother-in-law's handwriting, I am quite sure.

Mr. Beveridge: I offer this as Trustee's Exhibit number 1. It is self-explanatory.

The Referee: So marked.

Mr. Beveridge: Q. With reference to Trustee's Exhibit number 1 that was just offered, and then with further reference to two freight bills over the headline of the Pacific Electric Railway Company I will ask you to state if as a result of the issuance of that bill of lading, Trustee's Exhibit 1, were those freight bills issued I now hand you?

A. How to you mean issued?

Mr. Meyberg: I don't know what you mean. I object to that question as unintelligible.

Mr. Beveridge: Q. Handing you here what appears to be two freight bills, one is a freight bill and another a receipt for freight delivered, I will ask you to describe those two documents?

A. Well, they are just documents.

Mr. Meyberg: I object as calling for the conclusion of the witness if he wants a description of those documents.

The Referee: Objection sustained. Let me see what they are. Have you ever seen these documents before?

A. I saw them in the United States National Bank last week, your Worship. I may have seen them months or years ago but I don't recollect. But I did see them in the United States National Bank when we asked for the files relative to the movement of those gems.

Mr. Beveridge: Q. Handing you a document that is entitled "Receipt for Freight Delivered," I will ask you if that bears your signature?

A. Yes, I think that is my signature. I am not positive. I am not positive of that. I think it is.

Q. Well, did you sign any receipt when the merchandise in question—

A. I think that is my signature. I probably wrote it in a hurry. It is not my "H" though.

Q. Is this the instrument you signed?

A. Yes.

Q. Acknowledging the receipt of the merchandise in question?

A. I think so.

The Referee: Well, it speaks for itself. He signed it.

Mr. Beveridge: That is offered as an exhibit.

The Referee: Trustee's Exhibit 2.

Mr. Meyberg: Pardon me. These exhibits belong to the United States National Bank, or the Receiver, and we have been requested not to leave any records in any courts, and all other courts have substituted photostatic copies.

Mr. Beveridge: We will substitute photostatic copies, your Honor, if the originals should be kept.

The Referee: Yes, although I don't know why a photostatic copy will not do the bank just as well in this case. I do not concede that the Receiver of the United States National Bank has any superor jurisdiction over the United States District Court. If there is an exhibit here we want I think we are entitled to it.

Mr. Meyberg: We have a letter from the Department and I think several letters written from Washington on that question.

The Referee: We are very glad to accommodate you but I do not concede as a matter of law you have any authority to issue directions as to how we shall operate this court.

Mr. Meyberg: No, I was just stating the other courts conceded the courtesy to us by returning the originals.

The Referee: This matter is of little importance to the Receiver anyway. The Trustee will have a photostatic copy

made of this return and the photostatic copy will be returned to the bank.

Mr. Beveridge: Now, Mr. Heiser, I hand you what purports to be a resolution or card required to be produced by the bank for the opening of accounts and ask you to state if that bears your signature, that card?

A. Yes, on both sides. Pardon me. Let me see the back of that. I am not sure of that.

Q. You were signing there as secretary for the Golden State Gem Company of Nevada?

A. Yes.

Q. Now, does this card, the date this card bears, enable you to refresh your recollection as to the date that the corporation was actually formed?

A. It possibly would.

Q. This card appears to bear the date of August 21, 1928.

Mr. Meyberg: August 21?

Mr. Beveridge: Yes, or August 2nd, maybe it is—is it the 21st or 2nd?

Mr. Meyberg: August 21, 1938.

A. It could not be August 2nd.

Mr. Beveridge: Pardon me.

A. It could not be August 2nd.

Mr. Beveridge: This is offered as an exhibit.

A. Could I refresh my memory—when that was opened, your Worship, it was the date Mr. Smith received the checks from Mr. Leonard Woodruff, nine thousand and odd dollars to open that account with, and that is on or about the same date.

The Referee: This card will have to be photostated and you can turn the copy in to the bank. Have you any other exhibits?

A. There is another card.

The Referee: So we can have them all done at once.

Mr. Beveridge: There will be by the time I get through offering some more documents through Mr. Smith.

The Referee: Proceed.

Mr. Beveridge: Q. Now, did you ever sign any card similar to that in connection with the Golden State Gem Company of California?

A. Yes, I introduced Mr. Smith to the United States National Bank on or about the 16th of August and he opened an account in that name. You have the card on the desk there.

Q. The Golden State Gem Company of Nevada?

A. No, California, I said.

Q. He opened an account?

A. Yes, and the card is there. It was cancelled out with this company—underneath that paper. There it is. It was on the 16th.

Q. That is the date you introduced him?

A. Introduced Mr. Smith and he opened the account and then he cancelled that account and opened the Nevada account.

The Referee: Does that bear this witness' signature?

Mr. Beveridge: Yes, your Honor, it does as the introducer of Mr. Smith to the bank.

Mr. Meyberg: I don't know that is his signature. It says by Mr. Heiser.

Mr. Beveridge: Q. Is that your signature, Mr. Heiser?

A. Yes, it is.

Q. And that is the card you used to introduce Mr. Smith?

A. Yes, Mr. Beveridge.

Q. Had you been carrying your personal account in the United States National Bank at that time?

A. No, not a personal account; the account of the company mining gems in Australia, the Australian Gem Company.

Q. And you were acquainted there?

A. Oh yes.

Q. For a number of years previous?

A. No, but long enough to know them.

The Referee: You don't contend on this card of the Golden State Gem Company, introduced by Mr. Heiser, those two words "Mr. Heiser" are not your signature, do you?

A. It looks as though I scribbled them in a hurry. I might have. In the other document offered as some exhibit, your Worship, that one pertaining to the rough material, that is not the same kind of an "H"—on your left-hand there, you see? I may have been just in a hurry. I might have had a strange pen there.

Mr. Beveridge: Q. Now, Mr. Heiser, did you ever sell any merchandise to the old Golden State Gem Company of California for which you were never paid?

Mr. Meyberg: That is objected to as incompetent, irrelevant and immaterial.

Mr. Beveridge: He is claiming to be a creditor, your Honor.

The Referee: Objection overruled.

Mr. Meyberg: Is that besides the goods we are seeking to claim on here?

Mr. Beveridge: I think the question is quite definite and clear.

The Referee: I suppose it is a general omnibus question?

A. Yes.

The Referee: Is there anything else you claim in addition to the claim here?

A. Yes, there is an opal necklace in addition to that that I delivered to Mr. Calvin Smith. He was supposed to prepare the necklace and sell to Doctor John Lawrence Smith who told me about three days ago on the telephone—

Mr. Beveridge: I object to what Mr. Smith told him.

Mr. Meyberg: Just a minute.

The Referee: Why don't you include that in your claim?

A. I didn't know until four days ago that Mr. Calvin

Smith had retained it for himself, and he told me on the phone it went in with the old goods.

Q. Who did you deliver this necklace to?

A. To Calvin Smith to sell to Doctor John Lawrence Smith who really accepted it, but Doctor John Lawrence Smith told me last week he had not accepted it and Mr. Calvin Smith kept it.

Q. That was in—

A. 1928, your Worship.

Q. You delivered it to Calvin Smith and he was going to sell it to Doctor John Lawrence Smith?

A. Yes, to re-string it and sell it to Doctor Smith.

Q. What was said at the time you delivered it to Calvin Smith?

A. That he would re-string it and put a few larger and better beads on and deliver it to Doctor Smith. Doctor Smith actually accepted the necklace.

Q. Anything else said between you and Calvin Smith?

A. That I need not worry about the money, that he was a solvent man and director in both companies.

Q. Anything else?

A. That the money would be forwarded on to me as soon as he got it.

Q. By whom?

A. By Calvin Smith.

The Referee: Any other questions?

Mr. Beveridge: I guess that is all.

Cross Examination.

By Mr. Meyberg:

Q. Mr. Heiser, the items for which you seek payment here against the Golden State Gem Company of California in this claim consisted of what?

A. Thirty odd thousand ounces of industrial sapphires.

Q. At what price?

A. At one dollar an ounce.

Q. And is that a reasonable price for those?

A. Yes, it is very reasonable. There is a drouth on the market at present.

Q. At that time, at the time you delivered them, or I will

say from the period of August, 1928, to May of 1929, was that a fair value for those stones?

A. Yes.

Q. Now, as I understand, this claim does not include 1,000 ounces of assorted sapphires also in that shipment?

A. That is correct.

Q. And does not include 1200 ounces of opals which were not included in this claim but were in that shipment?

A. Yes.

Q. And 1,000 ounces of zircons, also?

A. The zircons have been included in Mr. Lawrence's tabulations of quantities but it was not in my claim my brother-in-law sent through because I was in Europe and he attended to it for me.

Q. And also one piece of jade of 28 ounces was in the shipment but not in the claim?

A. Yes.

Mr. Beveridge: I think the claim speaks for itself.

The Referee: Yes, and what was shipped in addition to what is claimed is immaterial.

Mr. Meyberg: Now, as to the assorted sapphires, Mr. Heiser, of 1,000 ounces, also included in this shipment that went to the United States National Bank, what was the reasonable value of those from August, 1928, to May of 1929?

A. $40 an ounce.

Q. And the 1200 ounces of opals during the same period, was *was* the reasonable value of those?

A. $15 an ounce.

Q. And the 1,000 ounces of zircons, what was the reasonable value of those?

A. $10 an ounce.

Q. And the piece of jade weighing 28 pounds (?) also included in that shipment, during the same period of time, what was the reasonable value of that?

A. Around $1,000.

Q. Were any of those items ever returned to you?

A. No, they were all taken from the bank by Mr. Woodruff's people.

Q. They were all included in this list of stuff taken by Mr. Woodruff in May under this execution referred to?

A. Yes.

Q. Now, has any of that material or any of that merchandise ever been returned to you?

A. No, I never seen it since the day it was put there, your Worship, since I left the country.

Q. Why, if you know, is the claim on file here only for the 30,000 ounces of industrial sapphires?

A. My brother-in-law was under the impression that is all they had taken out, Mr. Lobree in San Francisco. I was in Europe and I cabled him to attend to the matters and I think Mr. Smith communicated wth him and told him he could protect my interest, and Mr. Lobree thought there was only the industrial stuff taken out.

* * * * *

M. E. HEISER, recalled as a witness on behalf of the Claimant, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Meyberg:

Q. Mr. Heiser, calling your attention—

The Referee: On second thought, I don't think I can assume Mr. Woodruff would testify his purchase was by agreement with Mr. —his purchase was by agreement with the Golden State Gem Company. I will have to rescind my former statement on that because I cannot assume he will testify to that because there is nothing to indicate he would so testify, nor has Mr. Smith so testified in my opinion, nor have you any basis as far as I can see for your belief that he would so testify.

Mr. Meyberg: The basis for that belief is the proceedings in the Laugharn case plus the filing of a suit upon a note which he knew already was paid and giving the money to Mr. Smith to pay them, brought suit on the notes, one of them not due for six months or more after the suit was filed, yet he filed on those and knew they were claims in the Golden State Gem Company of California and not the Nevada Company. He filed those suits, and Mr. Smith didn't even appear in those actions.

The Referee: Those are conclusions and there is nothing about that to indicate that you have any foundation for your belief that Mr. Woodruff would testify as you have outlined.

Mr. Meyberg: I believe those are the facts.

The Referee: You may believe those are the facts, but there is nothing about that I can see that would justify you in stating Mr. Woodruff would so testify.

Mr. Meyberg: Your Honor, I must assume he would testify to the true facts.

The Referee: Proceed.

Mr. Meyberg: Q. Mr. Heiser, I am showing you Trustee's Exhibit number 2. This morning you testified that you thought that was your signature, and at noontime, in my presence you looked it over very carefully—

A. It is not my signature. After I looked it over—

Q. You are positive?

A. Absolutely positive, yes.

Mr. Meyberg: I want to call the Court's attention particularly to the fact that this item is consigned to McMorrie Heisen.

The Referee: Let us not argue now. Proceed with your evidence.

Mr. Meyberg: Very well.

Q. Now, the values, Mr. Heiser, you placed on those gems this morning, on all of them, I believe I asked you if it was a fair value of them. Would you also say it was the market value of them or at least it was a minimum market value of them in your opinion at the time or from the time from August 13, 1928, to May 10, 1929, that it was the very minimum value?

A. Yes, I would.

Q. As a matter of fact, the market value would be greatly in excess of the value or amount you testified to?

A. Yes, it would.

Q. During that period?

A. Yes.

Mr. Meyberg: I believe that is all.

The Referee: Is that all?

Mr. Meyberg: One other matter.

Q. Mr. Heiser, what, if you know, is the reason why only the industrial sapphires are included in this claim?

A. Because Mr. Lobree, my brother-in-law, was informed it was only industrial sapphires taken out.

Q. Did you inform him of that, or someone else?

A. Someone else in Los Angeles here. I was in London at the time this claim was filed.

Q. Did you instruct your brother-in-law as to what the actual claim was?

A. No, he just knew from the books it was 30,000 ounces of industrial sapphires, and nearly 40,000 ounces all together.

Q. Did you instruct him to put this part in the claim, taken from the Golden State Gem Company of Nevada?

A. No, he did that of his own accord.

Mr. Meyberg: Take the witness.

The Referee: Is that all? Any other evidence.

Mr. Beveridge: Just one question to straighten out this exhibit.

Cross Examination.

By Mr. Beveridge:

Q. Calling your attention to Trustee's Exhibit number 2 in which the shipment was consigned to McMorrie Heisen, was that meant to be you?

A. Oh, I think it was meant to be me.

Mr. Meyberg: We will stipulate it was meant to be Mr. Heiser.

Objectors' Exhibit OO.

In the Superior Court of the State of California in and for the City and County of San Francisco.

No. 238,348.

Morris Heiser, Plaintiff, vs. Maude James Graves, also known as Maude James Graves Loller, Defendant.

Be It Remembered that, pursuant to notice hereunto annexed, and on the 27th day of October, 1932, at the hour of 2 o'clock p. m., at Room No. 1700, No. 333 Montgomery Street, San Francisco, California, before me, Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared MORRIS HEISER, the plaintiff above named, who, being by me first duly sworn to tell the truth, the whole truth and nothing but the truth in the above entitled cause, then and there testified as is hereinafter set forth.

Alvin A. Lobree, Esq., and Frank G. Finnegan, Esq., appeared as counsel for the plaintiff;

Oscar Samuels, Esq., appeared as counsel for the defendant.

* * * * *

Direct Examination.

By Mr. Samuels: Q. Mr. Heiser, where do you reside?

A. In San Francisco at present, 2504 Cabrillo Street.

Q. You say "at present". Were you recently residing elsewhere?

A. I have lived in London and Australia.

Q. You mean by that, do you, Mr. Heiser, that your business takes you there?

A. All over the world, yes sir.

Q. And what is that business?

A. Gem dealing and mining.

Q. Are you engaged in that business as an individual?

A. Yes, sir.

Q. How long have you been engaged in that business?

A. Since I was fifteen years old.

Q. You know, of course, the defendant in this action?

A. Yes, sir.

Q. And how long have you known the defendant?

A. Since 1919.

Q. Since 1919?

A. Yes, sir.

Q. In a business way or a social way?

A. Business.

Q. When did you first come in contact with Mrs. Graves?

A. In 1919; her son introduced me to her in connection with a sapphire mining project in Australia.

Mr. Lobree: I suggest that you do not volunteer any information. Just answer the questions.

Mr. Samuels: Q. Did you seek to interest the defendant in that sapphire mining venture at that time?

Mr. Lobree: I will object to that as incompetent, immaterial and irrelevant and having no bearing on the issue.

Q. You are quite positive of that are you?

A. Yes, sir.

Q. That you are quite positive of?

A. Yes, sir.

Q. You referred to certain mines that you owned or had under lease—whatever the arrangement was is of no material moment—in Australia. I am talking about this time in 1928, the year 1928. Did you have any other mines anywhere else?

A. Anywhere else, what does that mean?

Q. Outside of Australia.

A. In 1928? No, not in 1928.

Q. How many different mining properties did you have under your control—I use that word without knowing the exact status of the title—in Australia at that time?

Mr. Lobree: I object as incompetent, immaterial and irrelevant, nothing to do with the issues of this case.

(The reporter read the question.)

A. Oh, about ten miles of country.

Q. For my information, would you call them one mine, or several properties?

A. Leases; amalgamated leases.

Q. They were all amalgamated leases?
A. Yes, sir.
Q. And you were the sole lessee, were you?
A. M. E. Heiser, yes.
Q. And they remained your property at all times?
A. M. E. Heiser, yes.
Q. You have never transferred them to anybody?
A. No; the lease is still in my name.
Q. You formed a Golden State Gem Company of Nevada, did you not?

Mr. Lobree: I object to that question as immaterial, irrelevant and incompetent. I cannot see the purpose—

Mr. Samuels: I will show that that $5000 note is connected with the issue of that stock.

Mr. Finnigan: We will make the objection to all this line of questions.

(The reporter read the last question.)

A. No, I did not form it.

Mr. Samuels: Q. Well, were you one of the incorporators?

A. Mr. Lobree and myself and Mr. Smith and several people.
Q. Who was Mr. Smith?
A. Mr. Smith of Los Angeles; there was quite a lot of people forming it.
Q. Anybody else, do you remember?
A. Mr. Woodruff, and Mr. Barstow—
Q. Who were those gentlemen, if I may ask?
A. Los Angeles people, and Oklahoma.
Q. Was there anybody in San Francisco outside of Mr. Loller and yourself?
A. No; Mr. Lobree was going to act as one of the directors in it, but he had nothing to do with the formation of it.

Mr. Lobree: I move that that be stricken out as not responsive.

Mr. Samuels: Q. When was it formed, do you remember?

A. Yes, the end of August, 1928; it started to be formed in the end of August, and it was completed some time in September, 1928.

Q. Do you know what the capital stock of that corporation was?

A. It was never completed; the company was never completed.

Mr. Lobree: I object on the ground that the corporate records would be the best evidence.

The Witness: The company was never completed, to the best of my knowledge.

Mr. Samuels: Q. Have you the corporate records?

A. No; I have not.

Q. Do you know where they are?

A. I do not.

Q. Is this one of the certificates of stock which I show you (showing paper)?

A. Yes, sir.

Q. Did the corporation reach the point where its capital stock was issued? It did, did it not?

A. They started to issue the stock and then the different people that were forming the corporation got into litigation and the company never functioned.

Q. Who were the people who got in litigation?

A. Mr. Smith and Mr. Woodruff.

Q. By that do you mean that a suit was filed?

A. A suit was filed before the company was properly organized.

Q. When was the suit filed, if you know? Was it in the year 1928?

A. I was out of the country when that happened. It was just after I arrived in London.

Q. Do you remember when you arrived in London?

A. I arrived in London the end of September, 1928. It was being formed while I was away.

Q. It was being formed while you were away?

A. Yes, sir.

Q. The corporation was?

A. Yes, sir. They started to form; it was in formation when I left.

Q. Was any stock ever issued?

A. I endorsed a lot of stock for them to use while I was away. They asked me to endorse certain stocks and I didn't know exactly—

Q. Look at this certificate.

A. Yes, that is my endorsement there. They asked me to endorse a lot of stock.

Q. Who asked you?

A. The lawyers up there that were forming the company.

Q. What was transferred to the company, if anything, for the issuance of the stock, do you know?

A. Yes, there was thirty odd thousand or thirty-two—I am not quite positive, but there was a large quantity of sapphires, approximately 40,000 ounces of sapphires, *and 1200, ozs of Best Blue Sapphires, MEH. HVF.; NP.* rough, and 1200 ounces of opal, and a thousand ounces of star sapphire and a thousand ounces of zircon.

Q. What is the latter?

A. It is an oxide of aluminum.

Q. You say they were transferred; they were owned by you theretofore?

A. Owned by myself.

Q. By you individually?

A. Yes.

Q. And by transfer you mean what; that you delivered possession of them to anybody?

A. No, I took them to the vaults of the United States National Bank at Eighth and Spring Streets and delivered them to the Golden State Gem Company of California.

Q. What was the Golden State Gem Company of California?

A. It was a California private company.

Q. A corporation?

A. Yes, sir, incorporated in California.

Q. Where was its principal place of business?

A. I think 711 South San Pedro Street, Los Angeles.

Q. When was that formed?

A. Oh, I am not positive; it has been in existence over 20

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years, but it was recapitalized, I think—I don't know exactly; I couldn't say for sure.

Q. You were the main stockholder in that corporation?

A. No, not at all; I did not own a share of stock in it.

Q. Under what circumstances did you turn these jewels over to this Golden State Gem Company of California?

A. Because they informed me that if I turned the gems over—

Q. Who were "they"

A. The president, Mr. Smith, and Mr. Woodruff; that if I turned the gems over to the Golden State Gem Company of California, they would form the Nevada company in such a way, and have it financed so that the mines could be operated, and they would give me all the money I required to operate the mines on a big scale, and they would undertake to buy a big quantity of preferred shares in the mines in Australia, provided I would turn those gems in.

Q. Was there anything said about the number of shares of stock that would be issued to you also for the transfer of these gems to the Golden State Gem Company of California?

A. No, I was to get no shares out of that at all.

Q. You were to get no shares out of that corporation at all?

A. No, all those shares were supposed to go to the Nevada Company.

Q. I am talking about the Golden State Gem Company of Nevada.

A. You asked me about the California company.

Q. If I did it was a mistake. Read my question.

The Witness: In the event of Mr. Saimuels asking me the wrong question and I answer, I don't want it to go in the record against me.

Mr. Lobree: Let the record show that there was a misunderstanding between counsel and the witness as to the name.

The Witness: There were two companies, one California, and one Nevada.

Mr. Samuels: I will repeat the question. Read the question.

(The reporter read the question: "Was there anything said to you about the number of shares of stock that would be issued to you also for the transfer of these gems to the Golden State Gem Company of California?")

Mr. Samuels: Insert the word as it should appear there. Insert "Golden State Gem Company of Nevada."

The Witness: ~~Yes; but they never issued them to me.~~ *MEH. HVF., NP.*

Q. What was said to you on that subject?

A. They just promised to issue certain shares to me. He gave me a written instrument to that effect, too.

Q. What has become of the written agreement?

A. I don't know; I think it is in Los Angeles.

Q. Will you produce that?

A. I don't know whether I could at present, because the company is in litigation there.

Q. Who were the different parties to this litigation. You told me the plaintiff was Smith. Who else?

A. Woodruff.

Q. Who are the defendants?

A. They are fighting each other.

Q. Do you know any of the defendants in there?

A. Mr. Smith is one, and Mr. Woodruff; they are both fighting each other.

Q. Do you know which one brought the suit?

A. I think Woodruff brought the suit.

Q. What are Mr. Woodruff's initials?

A. L. J., I think.

Q. You were in the State of California on the 24th of August, 1928, were you not?

A. Yes, sir.

Q. Your wife was, too?

A. To the best of my knowledge and belief, yes.

Q. How many shares of the stock of the Nevada corporation were issued in your name, do you know?

A. I think there was $80,000 at one time in my name in Los Angeles, and they were shipped down here to me; they

shipped the books down to me to sign and send to Los Angeles, and they sent $80,000 which was to go to Mr. and Mrs. Loller—8,000—let me see; I think there was 8,000 shares, yes, 8,000 shares were sent down here which I was to sign and countersign and transfer to Mr. and Mrs. Loller.

Q. By what arrangement were you to transfer them, and with whom was the arrangement made, to transfer them to Mr. and Mrs. Loller, or Graves?

A. Mr. and Mrs. Loller. Well, it is a long story.

Q. I would like to hear it.

A. All right. Whilst I was in Australia between 1927, some time during 1927, Mrs. Graves had told Mrs. Heiser that she would like to buy some of the rough blue sapphires from these new mines in the new fields that I was opening up.

Q. Was Mrs. Heiser here at the time?

A. Yes. She was not so well, so she could not accompany me. And Mrs. Heiser gave a sample of rough blue sapphires which I had left in the vaults amongst many of my other goods, to a Mr. Hunt—

Q. What vaults do you refer to? The Wells Fargo?

A. No, I don't think it was that—yes, I think they were; I am not positive which vault. I think it was the Union Trust Company and Wells Fargo, but I am not positive now which vault it was; but after they were delivered to Mr. Hunt and during that time, I understand—Mrs. Heiser told me they were sent—Mrs. Graves had told her that they were sent to Paris and while there the people in Paris had expressed a desire to obtain more of them, because they were gems of good quality and color, or something to that effect. And on my return Mr. Hunt was dead, and I had seen Mrs. Loller and Mr. Loller, and I had shown them quite a lot of my rough gems, on my return, and Mrs. Graves said that on account of her submitting these gems to Paris she was positive that large quantities of rough sapphire could be sold in Paris through her sons' connections there—I think the gentleman's name who was connected with them was Mr. LeKentrick and Mr. Bietrix.

Mr. Lobree: What was the date of this?

A. Around 1928.

Q. What part of the year 1928?

A. When this was taking place?

Q. Yes.

A. This was taking place immediately after the notes were given to me; it was within a few days of the notes; this thing was going on in 1928, my conversation.

Q. The conversation you testified to took place a few days subsequent to August 24, 1928?

A. Yes, sir.

Mr. Samuels: Go ahead.

A. And they said they could sell very large quantities of sapphires in Paris. Well, I said I was not in a financial position to ship larger quantities than what I had, because I hadn't sufficient cash to open the mines in a big way.

Q. Go ahead.

A. Mr. Walker Graves, or Mr. Jeff Graves had arrived during that time from Paris, somewhere about that time, and he had confirmed his mother's statement that big quantities of sapphires of the quality I had shown him could be sold there.

Q. You are referring to what period? You are referring to Mr. J. J. Graves?

A. Yes, sir.

Q. When did he arrive from Paris?

A. I don't know exactly when he arrived, but—

Q. How long after the execution of these notes?

A. This was a few days after the execution of the notes that I conferred with him, on this trip to Paris, and the rough gems that I had, because they arrived then from Australia.

Q. Then I understand that Mr. Jefferson Graves returned from Paris, we will say, within a week or two weeks after August 24, 1928?

A. That I don't know—no, I think he must have arrived before that. I don't know when he returned, because I was away, backward and forward.

Q. August 24, 1928, is the day when you consummated the sale?

A. Yes. I don't know when he arrived from Paris. What has that to do with when he arrived from Paris?

Q. You don't have to ask questions, I am trying to find out from you.

A. I don't know.

Q. You say you saw him in this connection?

A. I saw him in connection with the rough sapphires that I had.

Q. When did you see him in that connection?

A. I think it was right at the end—if I remember correctly, it was the 28th day or right at the very end of August.

Q. It was the 28th day of August of 1928?

A. Yes, sir. *around that time.* *MEH. HVF., NP.*

Q. Where did you see him?

A. I saw him over in his office at the—

Q. (Interrupting) James Company?

A. Yes, sir. I am not positive whether it was the 28th or the 30th?

Q. We will say in that proximity?

A. Yes, sir.

Q. You are not binding yourself to a specific date. Was any reference made at that time by you or by him to the sale which you had just made to his mother?

A. He knew of the sale, because he was trying to get a large blue sapphire which I had sold to his mother, for his wife.

Q. Was there any reference made to the fact that you had sold about thirty-five thousand or forty thousand dollars worth of gems to his mother a few days before, we will say, the 24th day of August, 1928?

A. Yes, sir.

Q. What was the language used?

A. He said "Well, if it makes her happy to have a lot of gems around her, why shouldn't she indulge in it?" Something to that effect.

Q. Was any reference made by you to the fact that the purchase price had been paid by these two notes?

A. I told him that she had bought a large quantity of gems, but I don't know whether the exact amount was discussed, because I assumed he knew that.

Mr. Finnigan: I insist that all this testimony referring

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to things that happened after the execution of the notes, is immaterial, irrelevant and incompetent, and I object to it.

Mr. Samuels: Q. Did you refer at all to the approximate quantity, by way of price, of gems that you had sold to Mrs. Graves?

A. We always refer to the prices of gems when we show them.

Q. I am talking of the conversation with Jefferson Graves.

A. I don't get the question.

Q. In this conversation that you have referred to, that you had with Jefferson Graves, to the best of your recollection, at the place of business of the James Company, and in which you have stated part of the conversation, and in which you have also stated that he knew, according to your belief, that you had sold his mother some $35,000 worth of gems some short time before this, was there any reference made by either one of you to the price?

A. That I cannot recollect; because we were not on that subject, we were on the subject of rough sapphires for *France*. *MEH. HVF. NP.* ~~friends~~.

Q. Was there any reference made to the fact that the price had been paid in the form of promissory notes?

A. That I don't know, sir; I can't remember.

Q. How often did you see Mr. Jefferson Graves at or about this time?

A. We met practically every day until about the 5th day of September. I used to go up to his apartment at the Huntington, and we met regularly, because he was anxious to get to Paris, because he said that the sapphires would be in demand there, and to hurry along as quickly as possible.

Q. On these daily visits that you made to Mr. Graves, or these daily meetings with him, was there any reference at any time to the notes that the mother had given you for this quantity of gems?

A. You just asked me that a few minutes ago.

Q. I asked you as to one specific conversation, one specific meeting.

A. Give me that question again.

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(The reporter read the question.)

A. Not that I can recollect.

Q. On any of these occasions prior to Mr. Graves' departure which you say was about the 5th of the following month, was any reference made to the selling price of these gems; the selling price that you had procured for them?

A. That is the same question.

Q. No, the other was as to the execution of the notes. Now I am asking you as to the price itself, $35,000.

A. I am confused.

Mr. Lobrec: Read the question.

(The reporter read the question.)

A. I can not recollect that there was.

Mr. Samuels: Q. On any of these occasions when you visited with, or met Mr. Jeff Graves, from the 24th day of August, 1928, until the 5th day of September or such time as he departed from the state of California, was there any reference made to the sale by you at or about the 24th day of August, 1928, of a considerable quantity of gems?

A. What do you mean by reference?

Q. By either one of you; reference to the quantity?

A. I can't just recollect that, *the exact quantity & price was spoken of.* *MEH. HVF., NP.*

Q. You can't recollect that?

A. No, *but we did discuss that Mrs. Graves had bought a large quantity of cut gems from me.* *MEH. HVF., NP.*

Q. Then so far as you know, your present recollection is that on any of the occasions that you met Mr. Jefferson Graves from the 24th day of August, 1928, until his departure on the 5th day of September, 1928, there was no conversation between Mr. Graves and yourself which would indicate that he knew that you had sold to his mother $35,000 worth of gems in one lot, or that she had delivered these two notes?

A. I am not sure, sir; I am not sure.

Q. When you referred to this first deal of August 24th 1928, you had sold gems, had you not, quite a number of them—I think you testified between seven and ten thousand dollars worth to Mrs. Graves before this?

Matter in italics in handwriting on original.

A. Yes, sir.

Q. During a protracted period of time?

A. Yes, sir.

Q. When you refer to this first deal, I take it you mean about a transaction of considerable size at one time; is that right?

A. I don't understand the question.

(The reporter read the question.)

A. I don't understand it now. You repeated just now about a nine thousand dollar deal. Are you trying to tangle me up, or what?

Mr. Finnegan: If you don't understand, don't argue.

Mr. Samuels: Q. Coming now to the corporation, do you know who engaged the attorneys to form the corporation?

A. Yes, sir.

Q. Who were they?

A. Mr. Calvin ~~and~~ Smith, *and Woodruff.*

MEH. HVF., NP.

Q. The two gentlemen from the south?

A. Yes, sir.

Q. Who were the attorneys who formed the corporation?

A. Rohe and Freston.

Q. Where was their office at that time if you know?

A. I couldn't remember exactly where it was.

Q. Attorneys of what state?

A. California; it was in Los Angeles.

Q. The corporation was formed by Los Angeles attorneys? Is that right.

Mr. Lobree: If you know.

A. ~~Yes, sir~~, I don't know. I never saw their charter, that

MEH. HVF., NP.

I remember; I don't know for sure. These people went ahead with this thing; I don't know whether they were California attorneys or whether they were from some other state.

Mr. Samuels: Q. As I understand it, the formation of this corporation resulted in part from a suggestion of Mrs.

Matter in italics in handwriting on original.

Graves and her son Jeff, that they could sell a large quantity of your gems abroad, is that right?

A. No, not exactly.

Q. I am trying to find out what was the cause of it. I though you related that. What was the cause of it?

A. That company was being formed by Mr. Smith and Mr. Woodruff, because there was a call for opals and sapphires from Australia, in large quantities.

Q. How many shares of the stock of the Golden State Gem Company of Nevada were actually issued to you?

A. There was nothing actually issued to me. The shares that I received when I was down here was, I think, 8000 shares, and they were sent down to Mr. and Mrs. Loller for a contract they were supposed to get for us in Europe.

Q. Sent down by whom?

A. The secretary of the company.

Q. Who was the secretary of the company?

A. There was a young lady in the lawyer's office who was acting as secretary. They made me an honorary secretary, but I was merely a figurehead.

Q. Do you know whether you were either appointed or elected secretary of the corporation?

A. I am not positive, but I think I must have been; but things were carried on there without me.

Q. Did you receive a certificate for 8000 shares of stock issued to you?

A. 8000 were issued in my name which I was to transfer to Mr. and Mrs. Loller.

Q. Under what understanding were you to transfer them?

A. That Mr. Loller was to be on the advisory board, and Walker and Jefferson Graves were to get a contract for me in Paris—it is on the minutes of the company, I am sure.

Q. Do you know where the minutes of the company are?

A. No, but I think I could get them for you in a matter of time, or a copy of them.

Mr. Samuels: I would be very glad to see them. They are down south too, are they?

A. Yes.

Q. Do you know who the parties are who represent the respective parties in this suit of Woodruff v. Smith?

A. They have been changed so much I couldn't tell you. They have been changing around. It is still in litigation. There are $425,000 worth of gems in one company, and there are all my gems in another, and they have been—in other words, it is just a mix-up, a tangled skein. It has been mixed up in such a way.

Q. Do you remember the names of any of the attorneys?

A. No, I couldn't tell you the names of the attorneys right offhand, because Mr. Barstow has been dismissed from the case, and they have changed lawyers—I don't know how many times.

Q. You referred to some four hundred odd thousand dollars worth of gems in one company and a large amount in the other?

A. Yes, sir.

Q. In which company were the $400,000 worth of gems?

A. They were all in the California company.

Q. All of them in the California company?

A. Yes, sir. It was supposed to be turned over to the other company.

Q. Have those gems been returned to you at all?

A. No, none of them have been returned. They are still in the hands of the receiver, I think.

Q. There is a receiver of the company?

A. Yes, there has been a receiver appointed.

Q. Do you know who the receiver is?

A. No, I couldn't remember offhand. I think he has been changed also. I am not positive, though.

Q. You have taken no steps to recover this four hundred odd thousand dollars worth of gems?

A. Pardon me; don't misunderstand me. The $420,000 worth of gems were not my property; they belonged to the Golden State Gem Company of California.

Q. They belonged to them?

A. Yes, sir. The gems I put in were valued at $164,000.

Q. You put in where?

A. That is what they cost to produce.

Q. You say "put in"; put in where?

A. Put into the vaults of the bank at Eighth and Spring streets, Los Angeles.

Q. Did you lose control of them, or have they been returned to you?

A. I have placed them in there and I had to leave them in the name of the Golden State Gem Company of California, because I was leaving immediately for Europe; I left on an early day in September for France.

Q. In 1928?

A. Yes, sir.

Q. On the 6th day?

A. 6th day of September, or 6th or 8th.

Q. Of September, 1928, you left for France?

A. Yes, sir.

Q. You left from Los Angeles?

A. No, I left from San Francisco.

Q. You say these gems, the one hundred odd thousand dollars worth were in the vaults of the bank at Eighth and Spring streets in the name of the California corporation?

A. Yes, sir.

Q. Have they been returned to you?

A. No, sir.

Q. And they are still there, so far as you know?

A. No, they have been taken out. That bank has gone into the hands of a receiver also.

Q. That is a United States bank?

A. Yes, United States Bank, I think they call it; United States National Bank I think. Mr. Fotheringham knows. Where did you send that money to Mr. Fotheringham?

Mr. Samuels: I know where it is. You never asserted an adverse title, so far as you know, to these one hundred and seventy odd thousand dollars—whatever the amount may have been, of gems, that you deposited in these vaults? You never claimed them? They don't belong to you?

Yes *MEH. HVF., NP.*

A. ~~No~~, *they do belong to me and I have claimed them.*

Q. The only reason, so far as you know, that these gems are still in the vaults of the bank, is that the bank has gone into receivership, is that correct?

A. No, there was another reason, because I had to leave them in the name of the Golden State Gem Company of California—Mr. Woodruff attached them on a note—wait a

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minute, it is complicated. I don't want to get the thing mixed. Mr. Woodruff had attached them on a note that had been *previously kept that previous MEH. HVF...NP.* secured, and he had ~~them as~~ security.

Q. Whose note do you refer to?

A. A note from Mr. Smith, which had nothing to do with me at all.

Q. Who represents you down there?

A. I have got two or three different lawyers; a Mr. Beverage.

Q. You said an arrangement was made, if I remember correctly, for the issuance of certain shares of stock of the Nevada corporation?

A. Yes, sir.

Q. To Mrs. Loller?

A. Yes, sir.

Q. Who were the parties to that arrangement?

A. Mrs. Loller—

Mr. Lobree: I object to the question unless the proper foundation is laid as to the time that arrangement was made.

Mr. Samuels: I am going to ask him that.

Q. When was this arrangement made?

A. This arrangement was made between the 24th of August and the early part of September.

Q. Who were present at the time the arrangement was made?

A. I couldn't recollect right off, but I think it was in Mrs. Graves' office.

Q. In Mrs. Graves' office?

A. Yes, sir, with Mr. Loller and Mr. Dudley. I am not positive whether it was there or in Mr. Dudley's office. I have got some slight idea—I am not positive whether it was in Mr. Dudley's or Mrs. Graves': I wouldn't say for sure.

Q. When you say Mrs. Graves' office, you refer to the James Company office?

A. Yes, sir.

Q. At that time, whether it was in the office of Mr. Dudley or the office of the James Company, are you quite sure that both Mrs. Graves and Mr. Dudley were present?

A. No, I am not positive if Mrs. Graves was there, or if Mr. Loller phoned Mrs. Graves from Mr. Dudley's office. Mr. Dudley was her lawyer.

Q. Mr. Loller himself was present?

A. Yes.

Q. In any event, Mr. Loller or Mr. Dudley were present?

A. Yes, I am nearly positive it was in Mr. Dudley's office. I am not sure.

Q. Was that arrangement in writing or not?

A. The only writing we had was that—

Q. I am asking you first whether it was in writing.

Mr. Lobree: If you remember.

A. I don't remember.

Mr. Samuels: Q. Was that not a writing prepared by Mr. Dudley embodying or supposed to embody the proposed arrangement?

A. There was an agreement offered me in 1926, but Mr. Bert Schlesinger advised me not to sign it.

Q. I am talking about 1928.

A. No.

Q. There was not?

A. Not to my knowledge, not to my recollection.

Q. But in any event, the arrangement was not effectuated, was it?

A. ~~No.~~ *the entire arrangement, of which part was the issuance of these shares, was never completed.*

MEH. HVF., NP.

Q. Is that correct?

A. I can't understand that.

Q. This alleged arrangement was not carried into effect, was it? Was the alleged arrangement carried into effect?

A. Yes.

Q. What was the arrangement, if you will tell me?

A. The arrangement was that Mr. Graves had contacts in Paris that would require large quantities of my rough sapphires. For that contact I was to allow them a first option and call over my gems in Europe, and for that contact they were to get ~~80,000 shares or~~ 8000 shares of this Golden State

MEH. HVF., NP.

Matter in italics in handwriting on original.

Gem Company *of Nevada*. The Golden State Gem Company was to find me the money to mine so as to enable me to execute that contract.

Q. What was the Golden State Gem Company to get?

A. They were to get a call in America for my gems.

Q. They were to find you the money—is that correct—to mine, and you say they were to get a call in America for your gems. What does that mean, an agency?

A. They were to have the agency in America, and also they were to buy, I think, more than half of the preferred shares of the company.

Q. Who were "they"?

A. The company that we are talking about, the Golden State Gem Company of Nevada.

Q. They were to buy half of the preferred shares, of its own shares?

A. To buy half of the shares of my mining—half the interest in my mining.

Q. They were to buy a half interest in your mine?

A. Yes, which would enable them—

Q. (Interrupting) Had the price been determined at which they should buy the half interest?

A. Yes, sir.

Q. What was that price?

A. I can't recollect directly, but they were to send to Australia for the sapphires.

Mr. Lobree: I suggest that you answer the question.

Mr. Samuels: You don't remember the price. Was this arrangement embodied in any writing, that you refer to?

A. Yes, sir.

Q. Have you a copy of it?

A. I haven't here, because all the papers are in the litigation.

Q. Have you it down south?

A. It is down south.

Q. Can you produce that?

A. I couldn't say that I could, because—

Q. Could you procure a copy of it?

A. I am not positive, because there is lots of unusual pro-

ceedings in connection with this case. One of the files I decided to get at, but a lawyer stole it from the Hall of Records; and there are a lot of serious connections, and I can't promise any—

Mr. Lobree: Your contention is that the arrangement has some connection with the $5000 note?

Mr. Samuels: Yes. Q. Let me ask you this: Who was your lawyer who is now handling that feature in Los Angeles?

A. I am just thinking of the lawyer's name now.

Q. Who was handling it?

A. Beverage is handling—but I broke away from him recently because—

Q. Have you substituted anybody for him?

A. I have not definitely, no.

Q. What is his first name?

A. I am not sure whether it is W or R.

Q. Do you know his address?

A. No, he moved his office I understand; I am not positive.

Q. When did you last see him?

A. Oh, about three or four months ago.

Q. Where did you call upon him then to see him?

A. I met him at the hotel office at the Alexandria.

Q. You did not call upon him at his office?

A. No, he was hiding out because he thought somebody was going to hijack him, and he was hiding out in the Hotel Roslyn.

Q. As I understand it then, while you formed your corporation—

A. I didn't form the corporation.

Q. While the corporation was formed? Is that correct?

A. It was being formed.

Q. In Nevada?

A. Yes, sir.

Q. It was formed, was it not?

A. No, they started the formation of it in Nevada, but it was never formed.

Q. Stock was issued in it?

A. They started to issue stock.

Q. When you say it was never formed, what do you mean?

Mr. Lobree: That calls for the opinion and conclusion of the witness.

Mr. Samuels: Q. What do you mean by it, Mr. Heiser?

A. The lawyer in Los Angeles told me the company was never properly organized or formed.

Q. That is what you mean by it?

A. Yes, that is what the lawyer told me.

Q. Look at this certificate of stock if you will kindly. You will see that it bears the witness mark on the back of that stock and immediately below the assignment clause, of your wife, is that correct?

A. Yes, sir.

Q. Is that her *wriging?*

A. I think so; I am nearly sure.

Q. And further viewing the certificate, immediately below the assignment clause, that is your signature, is that correct?

A. Yes, sir.

Q. And inserted in blank spaces are the words "I" and "Maude James Loller"; is that correct?

A. Yes, sir.

Q. In whose handwriting are those words?

A. I think that is mine.

Q. You will also notice handwriting, "25 August 1928" on the date line; whose handwriting is that?

A. I think that is mine also, sir.

Q. Were those insertions made on the date the assignment bears?

A. I don't understand that.

Q. Were those insertions in the blank spaces which you have just referred to, "I", "Maudie James Loller" and the date "25 August 1928" made on the date appearing in the date line, "25 August 28"?

A. I don't think so, sir, because a lot of those papers were prepared in Los Angeles while I was here, and they sent them down here for me to sign them, or from Los Angeles to San Francisco, and I am not positive of that.

Q. Did you endorse any other certificates of this corporation at the same time in the same manner?

A. Yes, sir.

Q. How many more?

A. There were several others; I don't know exactly how many.

Q. What is your best recollection?

A. I remember giving them to Mr. Loller.

Q. When did you give them to Mr. Loller?

A. I think it was the early part of September, I am not positive.

Q. The early part of September?

A. Yes, it was just before I left for Europe.

Q. It is a fact, is it not, that you gave him 5000 shares in five separate certificates?

A. I couldn't tell you exactly how many.

Q. What is your best recollection?

A. I couldn't tell you how many I gave him offhand.

Q. Well, I will show them to you, so you will note it. There is no objection to showing them to you. I am going to show you. The certificate number which has been referred to by the witness up to the present time is No. 14. I am going to show you now certificates Numbers 10, 11, 12 and 13, in addition. They run serially from 10 to 14 inclusive. Look at the certificates, each one, and advise me whether or not they do not bear your handwriting in each instance on the back, and in conjunction with the assignment provision or transfer clause? I am referring to certificates as I mentioned by number, 10, for 1000 shares; 11, for 1000 shares; 12, for 3000 shares; 13, for 1000 shares; 14, for 1000 shares; all dated, so far as issue was concerned, on the 24th day of August, 1928; and all transferred by endorsement on the back, in the space provided therefor, to Maudie James Loller, in the instance of all certificates, save 11, and in 11, to Maude James Loller; and each bearing date of transfer on the 25th of August, 1928; Certificate No. 14 and Certificate No. 12 being witnessed by Mrs. Lillian Heiser, and the remaining three certificates being unwitnessed; each certificate representing common stock of Golden State Gem Company of Nevada, without nominal or par value.

Q. Mr. Heiser, did you deliver these shares of stock to Mrs. Loller or Mr. Loller?

A. To Mr. Loller.

Q. Do you remember where you delivered them to him?

A. I think it was in his office; I am not positive; I am nearly sure it was in his office on Market street.

Q. You are talking about the James Company premises?

A. Yes, sir.

Q. Was anybody present when you delivered them?

A. No, I don't think there was.

Q. What is your best recollection of the date of delivery?

A. I think it was about the first of September, sir, the early part of September, I think.

Q. Why did you insert the 25th day of August, 1928?

A. Because they told me to do that immediately when I received them, and I think after they were issued in Los Angeles they were sent here and I got them next day. *I received the shares, several days prior to delivery. MEH. HVF., NP.*

Q. Who were "they"?

A. I think it was Mr. Smith; I am not sure.

Q. By letter?

A. I think he telephoned to me to do it, because they did a lot of business by telephoning to me.

Q. These were executed in the presence of your wife; these two bear her signature?

A. Yes, sir.

Q. Were they transferred in the presence of your wife? Was the transfer clause filled out in the presence of your wife?

A. Yes.

Q. That was where, in your home?

A. Yes, upon, I think, 24th Avenue we lived then.

Q. Did you ever advise Mrs. Loller that you had transferred to Mr. Loller these 8000 shares of stock in this corporation?

A. I think that Mrs. Graves and Mr. Jefferson Graves and Mr. Loller and all of us met just the day before I left for Europe.

Q. Where did you meet?

Matter in italics in handwriting on original.

A. I think if I can remember correctly, it was over at Ross.

Mr. Finnegan: I object that the stock shows they were transferred to Mrs. Graves. Do you mean transferred or delivered?

Mr. Samuels: Did I say transferred?

Mr. Finnegan: I think you said "delivered".

Mr. Samuels: In any event, let the record show, so there will be no room for confusion between counsel and the witness, that the question is directed to the physical delivery of the stock to Mr. Loller. What was the further statement you were making?

A. I forgot the question now.

Q. You say you think there was a meeting?

A. There was a meeting at Ross with Mr. Graves and Mr. Loller and Mrs. Loller.

Q. Was Mrs. Graves present?

A. Yes, and there was a discussion of the rough sapphires which I was to supply them and give them an option on, and these shares, and the general condition of that syndicate or company was spoken of in general terms, quite a lot.

Q. Was there any reference at any time, or mention at any time by you to Mrs. Graves that you had delivered physically to Mr. Loller the shares of stock in the Golden State Gem Company of Nevada?

A. I don't recollect making a statement like that.

Q. Did you ever mention to Mrs. Graves that the 8000 shares of stock in this corporation had been transferred by endorsement of certificates or otherwise, by you to her?

A. I don't recollect, sir, but I know we spoke of them; and I know she had them.

Q. When did you find out she had them?

A. Because Will spoke—Mr. Loller spoke of them, and Mr. Jeff Graves spoke of them over there.

Q. Over where?

A. Over at their home in Ross.

Q. In the presence of Mrs. Graves?

A. Yes, sir.

Q. What was said about stock?

A. They just discussed the stock. They said that if the contracts were booked up in France and the French people got the sapphires and sold them, as Mr. Jeff thought he could do, and the company here functioned correctly and got the money with which the mines could be developed properly, that the stock would be worth a lot of money in a short time.

Q. Was there any reference at any time to the fact that you had transferred some of the stock to Mrs. Graves, or we will say, delivered it, to Mr. Loller—any reference in the presence of Mrs. Graves?

A. I can't just recollect right off to say definitely.

Q. How was it you transferred 8000 shares of stock, this particular number of 8000 shares?

Mr. Bobrey: Were there 8000 or 7000?

Mr. Samuels: Seven thousand. Pardon me. Where I said 8000, change it to seven.

A. I am not positive of that; I am under the impression that there were some more shares that Mr. Loller got in his name, but I am not positive. I think Mr. Loller got an equal amount as that, the same amount as that.

Q. Have you any recollection of delivering him 7000 shares issued in his name?

A. I remember telling him he had shares, but I didn't say it ~~was~~ 7000.

Q. Have you any recollection of delivering him any more shares than the 7000 shares standing in the name of Mrs. Graves in this corporation?

A. I am under the impression that when I delivered them *some* there were ~~a lot~~ more shares ~~with it~~ *in Lollars name delivered to him.* *MEH.. HVF.. NP.*

Q. You are under that impression?

A. Yes.

Q. How many shares more?

A. I couldn't say for sure.

Q. More than 10,000?

A. ~~Yes.~~ *No,* *MEH.. HVF.. NP.*

Q. More than 20,000?

Matter in italics in handwriting on original.

A. I think there were something ~~like~~ *between 1000 & 8000* ~~80,000~~ shares; I ~~am not positive though, but~~ *don't* I think there was a lot more than that. *MEH, HVF, NP.*

Q. You think you delivered to Mr. Loller some 80,000 shares in all, in this corporation?

A. Yes, sir, *between 1000 & 8000 shares. No MEH, HVF, N.P.*

Q. Evidenced by how many certificates? What is your best recollection?

A. I couldn't say right off.

Q. More than one?

A. ~~Yes, more than one.~~ *I am not sure MEH., HVF., NP.*

Q. More than two?

A. I think so, yes. *I am not sure; there may only have been one. MEH., HVF., NP.*

Q. Less than ten? I am talking about certificates like these.

Mr. Lobree: If you have any recollection.

A. I haven't any definite recollection of how many.

Mr. Samuels: Q. You can't say whether there were two or ten?

A. No; I know I delivered them; if I remember correctly there were ~~80,000~~ *8,000* shares *in all.* *MEH., HVF., NP.*

Q. When did you deliver them?

A. All together.

Q. They were all delivered together, is that correct?

A. Yes, sir.

Q. How were the other shares? In whose name? Were they issued in your name and signed by you?

A. I couldn't say for sure, without having them here.

Q. Do you know whether they were in the name of Mr. Loller or Mrs. Loller by either direct issuance or by assignment?

Mr. Lobree: We make the objection that the stock certificates are the best evidence.

Matter in italics in handwriting on original.

Mr. Samuels: They are not here; we haven't got them.

Mr. Lobree: The witness can't remember those details.

Mr. Samuels: If he can't remember, he is going to answer and say "I don't remember." Q. What is your best recollection on the subject?

A. I don't know the question.

(The reporter read the question.)

A. No, I don't recollect.

Q. You have no recollection at all then, have you, of transferring by assignment such as appears upon this blank, the back of Certificate No. 14, which I have shown you, any additional shares of stock in this corporation to either Mrs. Graves or Mr. Loller?

A. I said just a few minutes ago I had; there were more shares than that.

Q. You didn't understand the question. Read the question.

(The reporter read the question.)

A. I have said previously that there were more shares than that, I was sure of that.

Q. I ask you whether you have any recollection of the assigning of any additional shares yourself?

A. I haven't any recollection.

Q. Do you know whether or not any additional shares were issued directly in the name of either Mrs. Graves or Mr. Loller?

A. No, I couldn't recollect because I was not active—

Mr. Lobree: That is the answer; just answer the question.

Mr. Samuels: Q. Now, isn't it a fact that the $5000 note involved in this suit was transferred to you by Mrs. Graves in consideration of the 7000 shares of stock I have just disclosed to you?

A. No.

Q. It had no connection with it at all?

A. Nothing at all whatsoever.

Q. Then, according to your statement, Mr. Heiser, the

stock in this corporation was valueless from the very time of its issuance?

A. That I don't know. I was led to believe that it was quite valuable stock and if all people had functioned the way they said they would, it would have been very valuable, and I was out an enormous amount of money by people not functioning as they said they would.

Q. You mean loss of property?

A. Loss of property and time.

Q. As a portion of this plan which you have referred to in conjunction with the development of your mines in Australia, you went to London, did you not, to meet Mr. Graves and an expert by the name of Bietrix?

A. Yes.

Q. And he examined some of your gems taken from these mines?

A. Yes, sir.

Q. And he reported adversely on them did he not?

A. No, sir, on the contrary he was anxious for me to come immediately to Paris with my gems, which I did.

Q. You went to Paris with your gems?

A. Yes.

Q. Was any arrangement made there for the disposal of your gems?

A. Yes, the first package that had arrived were to be taken out and shown to several people, and they expressed a desire to purchase them, and within a few days he sold 30,000 francs worth of blue sapphires.

Q. Who did this?

A. Mr. Beatrix, the gentleman you just named; Mr. Beatrix and Mr. LeKentrick; they were together.

Q. Was there a Mr. Ponzi?

A. Yes, I think Mr. Ponzi is the man that asked for the 30,000 francs worth; the first lot.

Q. Did you sign, as secretary of the corporation Golden State Gem Company of Nevada, any other certificates than the ones I have called to your attention?

A. I signed a complete book of certificates.

Q. That was about when? The same time?

August I think

A. I don't know exactly the date, but it was in ~~April~~.

MEH., HVF., NP.

Matter in italics in handwriting on original.

because I think they wanted a sample of my signature and I signed it and they took a photostat or something of it and I had to sign several books; a complete book of shares, blank; they were all in blank and they wanted me to sign, because while I was away they wanted my signature on the papers, which I did, and left them there in blank.

Q. You signed a certificate book, and they also took a facsimile of your signature?

A. Yes, sir.

Q. But you signed in your own handwriting a book of certificates?

A. Yes, they asked me to sign.

Q. You did, didn't you?

A. Yes, sir.

Q. Did you ever attend any meetings of this company?

A. Yes, I attended one or two meetings.

Q. Where?

A. Not the meetings of the company. I attended one or two meetings in Los Angeles before the company was formed, when we were deciding about the contract for my rough gems. It was in Los Angeles but I couldn't tell you exactly.

San Pedro

One of the places was in 711 South ~~Spring~~ street; on several occasions we met there; there were several occasions.

MEH., HVF., NP.

Q. Between what time?

A. Other occasions I had to run up one day and come back the next day, like; go up in the morning and come back in the evening; then I was selling goods there. I had sold several thousand dollars worth. It was 711 South San Pedro street.

Q. Do you know if that has any office name, that building?

A. It was the Golden State Gem Company of California.

Q. Was it an office?

A. Two big buildings, approximately 100 by about 300. They had a big gem cutting factory on one side and show cases on the other. There was 711, and I think 713; I am not positive.

Q. In those premises there were meetings of the Golden State Gem Company of Nevada?

A. Of California.

Matter in italics in handwriting on original.

Q. I am talking about Nevada. Did you ever attend—

A. There was no company to attend. They were making arrangements with the California company, that the Nevada company would be formed and function while I was away.

Q. Did you ever attend what purported to be a directors' meeting or a stockholders' meeting of the Golden State Gem Company of Nevada?

A. No, sir, not to my recollection.

* * * * *

State of California, City and County of San Francisco, ss.

I, Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, hereby certify that the witness Morris Heiser, named in the foregoing deposition was by me first duly sworn to tell the truth, the whole truth and nothing but the truth in the above entitled cause; that said deposition was commenced on the 27th day of October, 1932, having been continued by stipulation of the respective parties, from the date specified in the notice of taking said deposition; that the same was taken at Room 1600, No. 333 Montgomery Street, San Francisco, California; that the said deposition was taken down in shorthand by J. L. Holland, a competent shorthand reporter and disinterested party, and by him transcribed into longhand typewriting; that after having been so transcribed it was carefully read over by said witness, and having been corrected by him in such particulars as he desired, was by him subscribed in my presence.

In Witness Whereof I have hereunto set my hand and affixed my official seal this 16th day of November, 1932.

HELEN V. FLANAGAN, Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

Endorsed Filed May 17-1933. H. A. van der Zee, Clerk By H. Brunner Deputy Clerk.

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* * * * *

OO-2.

Amendment to Answer to First Amended Complaint.

In the Superior Court of the State of California in and for the City and County of San Francisco.

Morris Heiser, Plaintiff, vs. Maude James Graves, also known as Maude James Graves Loller, Defendant. No. 238348.

Now comes the defendant above named, by way of amendment to the Answer, on file in the above entitled cause, to the First Amended Complaint on file herein, by addition of further defenses to each of the counts of said Complaint, and alleges as follows:

And as a third and separate defense to the first count of said First Amended Complaint, defendant is informed and believes and upon such information and belief alleges, that Golden State Gem Company of Nevada was at all times in this defense mentioned a corporation incorporated and existing under and by virtue of the laws of the State of Nevada. Defendant further alleges that the promissory note mentioned in said first count was executed and delivered by defendant to plaintiff and accepted by plaintiff as a portion of the purchase price on a purported sale at said time by plaintiff to defendant within the State of California of certain purported shares of stock, claimed by defendant at said time to be owned by him, of Golden State Gem Company of Nevada, a corporation. That at no time was any permit ever issued by the Commissioner of Corporations of the State of California authorizing the sale of any stock of said corporation. That said shares of stock were not at any time herein mentioned and are not of any value whatsoever.

And as a fourth and separate defense to the first count of said First Amended Complaint, defendant is informed and believes, and upon such information and belief alleges, that Golden State Gem Company of Nevada was at all times in this defense mentioned a corporation incorporated and existing under and by virtue of the laws of the State of Nevada. Defendant further alleges that the promissory note mentioned in said first count was executed and deliv-

ered by defendant to plaintiff and accepted by plaintiff as a portion of the purchase price on a purported sale at said time by plaintiff to defendant within the State of California of certain purported shares of stock of Golden State Gem Company of Nevada, a corporation. Defendant is informed and believes, and upon such information and belief alleges, that although said shares of stock stood at the time of said purchase in the name of plaintiff, said shares of stock were at said time in reality treasury stock of said corporation. That at no time was any permit ever issued by the Commissioner of Corporations of the State of California authorizing the sale of any stock of said corporation. That said shares of stock were not at any time herein mentioned and are not of any value whatsoever.

And as a third and separate defense to the second count of said First Amended Complaint, defendant is informed and believes, and upon such information and belief alleges, that Golden State Gem Company of Nevada was at all times in this defense mentioned a corporation existing and incorporated under the laws of the State of Nevada. Defendant further alleges that she signed her name on the bottom of the promissory note mentioned in said second count and delivered said note to plaintiff and that the same was accepted by plaintiff as a portion of the purchase price on a purported sale at said time by plaintiff to defendant within the State of California of certain purported shares of stock, claimed by defendant at said time to be owned by him, of Golden State Gem Company of Nevada, a corporation. That at no time was any permit ever issued by the Commissioner of Corporations of the State of California authorizing the sale of any stock of said corporation. That said shares of stock were not at any time herein mentioned and are not of any value whatsoever.

And as a fourth and separate defense to the second count of said First Amended Complaint, defendant is informed and believes, and upon such information and belief alleges, that Golden State Gem Company of Nevada was at all times in this defense mentioned a corporation incorporated and existing under and by virtue of the laws of the State of Nevada. Defendant further alleges that she signed her

name on the bottom of the promissory note mentioned in said second count and delivered said note to plaintiff and that the same was accepted by plaintiff as a portion of the purchase price on a purported sale at said time by plaintiff to defendant within the State of California of certain purported shares of stock of Golden State Gem Company of Nevada. Defendant is informed and believes, and upon such information and belief alleges, that although said shares of stock stood at the time of said purchase in the name of plaintiff, said shares of stock were at said time in reality treasury stock of said corporation. That at no time was any permit ever issued by the Commissioner of Corporations of the State of California authorizing the sale of any stock of said corporation. That said shares of stock were not at any time herein mentioned and are not of any value whatsoever.

Wherefore, defendant prays that plaintiff take nothing by his action and that she may be hence dismissed with costs herein incurred.

OSCAR SAMUELS,
Attorney for Defendant.

[Verified.]

OO-4.

Judgment.

(Illegible initials and date /37.)

In the Superior Court of the State of California in and for the City and County of San Francisco.

Morris Heiser, Plaintiff, vs. Jefferson J. Graves, Administrator with the will annexed of the Estate of Maude James Graves, also known as Maude James Loller and Maude James Graves Loller, deceased, Defendant. No. 238,348.

This cause having been regularly brought on for trial on March 2d, 3d, 4th, 5th and 8th, 1936, before the Court sitting without a jury, the plaintiff appearing by W. Olds, Esq., his attorney, and the defendant appearing by Oscar

Samuels, Esq. and Tevis Jacobs, Esq., his attorneys, and evidence, both oral and documentary, having been introduced by the respective parties and the Court having heard and considered the proofs offered by the parties, and the records and papers in said cause, and said cause having been thereupon submitted to the Court for its decision, and the parties hereto having by written stipulation on file herein waived findings of fact and conclusions of law and having agreed upon the amount of defendant's costs to be included in and as a part of the judgment herein,

It Is Hereby Ordered, Adjudged and Decreed that the above-named plaintiff take nothing by his said action and that said defendant do have and recover from said plaintiff as his costs and disbursements in said action the sum of $135.08.

Judgment Rendered This 26th day of March, 1937.

JAMES H. WALD, Judge.

Recorded Mar. 27, 1937 10:55 o'clock A. M. No. 406 Page 304. H. A. van der Zee, Clerk. By R. D. Carroll Deputy Clerk.

The annexed instrument is a correct copy of the original on file in my office. Attest: Certified: June 8-1939. H. A. van der Zee, County Clerk of San Francisco, and Ex-Officio Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco. By J. M. Cummins, Deputy. (Seal).

Objectors' Exhibit PP.

* * * * * *

Application for Leave to Sell and Issue Stock.

(Stamped) State Corporation Department Received June 16 1937 Los Angeles Office.

Before the Commissioner of Corporations of the State of California.

In the Matter of the Application of International Gems, a corporation, for leave to sell and issue stock.

To the Honorable, the Commissioner of Corporations of the State of California:

Pursuant to the provisions of "The Corporate Securities Act" of California, the undersigned, International Gems, a corporation, organized and existing under and by virtue of the laws of the State of California, hereby makes application to the Commissioner of Corporations of said State for leave to sell and issue stock, as set forth in the prayer of this Application.

In support of said application, said corporation represents as follows:

First: International Gems, a corporation, was duly incorporated under the laws of the State of California, on the 8th day of June, 1937; that its principal place of business is in the City of and County of Los Angeles, State of California;

Second: The number of shares, which, by the Articles of Incorporation, may be issued is as follows: 500,000 shares of the par value of $1.00 per share.

Third: That no stock has been subscribed for prior to this time.

Fourth: Applicant proposes to issue at this time the number of shares hereinafter set forth for the purposes hereinafter stated.

Fifth: There has been no previous sale of stock and no brokerage has been paid, and applicant will not issue any prospectus in the sale of its stock, except by special permission from the Commissioner of Corporations.

Sixth: Applicant proposes to acquire the business heretofore operated by M. E. Heiser, consisting of the importing and exporting of precious gems; also to acquire the business of Ted Zimmer, consisting of cutting and polishing of precious gems; also to acquire the stock of rough and finished precious gems belonging to M. E. Heiser and now located in the safety deposit vault of the Bank of America; also to acquire from M. E. Heiser three gem-cutting machines, together with the right to manufacture and use additional machines of the same type.

Seventh: Applicant proposes to issue to Fred D. Tiffany, M. E. Heiser, Ted Zimmer, Sam Kress, Arnold Staunton, H. Goldman and B. Cameron, or to any or all of them, an aggregate of 150,000 shares of this corporation's stock as consideration for the above described assets. The said business has sufficient assets and business on hand to commence and continue operations. The proceeds from the sale of stock, if any, will be used as additional working capital, particularly for the purpose of enlarging the factory, increasing stock of merchandise and generally expanding the said business.

Eighth: The names and addresses of the officers of said corporation are as follows:

	Present address:
Fred D. Tiffany	Oklahoma City, Oklahoma
M. E. Heiser	Los Angeles, California
Ted Zimmer	Los Angeles, California
Sam Kress	Los Angeles, California
Arnold Staunton	Los Angeles, California
H. Goldman	Los Angeles, California
B. Cameron	Los Angeles, California

Ninth: The business will be in charge of the following officers:

Fred D. Tiffany, President, who for more than ten years last past has been engaged in handling the personal financial affairs of himself and his family, and also in dealing in precious stones;

M. E. Heiser, First Vice-President, who for the past twenty years has been engaged as an exporter and importer of precious gems in various parts of the world, and also in the business of mining precious gems in all parts of the world; and

Ted Zimmer, Second Vice-President, who will be in charge of the cutting of the gems and manufacturing of the jewelry. Mr. Zimmer for the past nineteen years has been actively engaged in the gem business, nine years in business for himself, and ten years employed by Petrie & Company of Los Angeles, as manager of their gem cutting factory.

Tenth: Applicant at present has no assets or liabilities other than the organization expenses, and has conducted no business as such corporation; therefore, no financial statement can be prepared or submitted at this time.

Eleventh: Attached hereto and filed herewith are the following Exhibits, which by the reference herein are made a part of this Application, viz:

Copy of Articles of Incorporation	Exhibit "A"
Copy of By-Laws	Exhibit "B"
Copy of Minutes of Organization Meeting of the Organizers of said Corporation, and copy of Minutes of similar meeting of the Board of Directors of said corporation	Exhibit "C"
Copies of Proposed Certificates	Exhibit "D"
List of Assets to be Acquired by Corporation in Exchange of 150,000 shares of stock	Exhibit "E"
Schedule of Proposed Operations	Exhibit "F"

Wherefore, applicant requests that said Commissioner of Corporations grant said corporation leave to sell and issue to Fred D. Tiffany, M. E. Heiser, Ted Zimmer, Sam Kress, Arnold Staunton, H. Goldman and B. Cameron, or to any or all of them, an aggregate of 150,000 shares of this corporation's stock in exchange for the physical assets described and referred to in Exhibit "E" hereof, first to be transferred to the corporation; also for leave to sell and issue to the public 125,000 shares at a price of $1.00 per share with the right to pay twenty per cent commission on all sales, so as to net this corporation eighty per cent of the total received from such sale or sales of said shares.

Dated at Los Angeles, California, this 10th day of June, 1937.

INTERNATIONAL GEMS
By M. E. HEISER
By B. CAMERON

State of California, County of Los Angeles, ss.

M. E. Heiser, being first duly sworn, deposes and says:

That he is the First Vice-President of International Gems, a corporation; that he makes this Affidavit for and on behalf of said corporation; that he has read the foregoing Application and all of the Exhibits thereto attached and made a part thereof, and that the same and each thereof and all statements therein contained are true of his own knowledge.

M. E. HEISER.

Subscribed and sworn to before me this 10th day of June, 1937. Geo. W. Perkins, Notary Public in and for said County and State. (Notarial Seal).

Los Angeles, California, October 16th, 1937.

Commissioner of Corporations of the State of California.
State Building, Los Angeles, California.

In re: International Gems 65704 LA

Sir: In view of the present condition of the gem market, both in this country and abroad, we deem it advisable to defer any activities with respect to any stock issued of this company until some future date.

We, therefore, request the withdrawal of the Application for Permit filed in this matter.

Respectfully yours,

INTERNATIONAL GEMS, A corporation
By M. E. HEISER, Vice-President.

Objector's Exhibit No. 1

Notice of Unsecured Property Taxes

JOHN R. QUINN, COUNTY ASSESSOR
LOS ANGELES CALIF.

ASSM'T NO. 53772 VOL. 173 PAGE 220 CODE 1

ASSM'T NO. 53772 VOL. 173 PAGE 220 CODE 1

DO NOT DETACH

1939

No further notice of taxes due on this bill will be sent you.
PLEASE PRESENT THIS NOTICE WITH REMITTANCE
See reverse side for important information.

HOWARD L WOODRUFF
4532 HOLLYWOOD BLVD
CITY

The taxes on your unsecured property listed below are as follows:

		VALUE	TAX
FURNITURE			
	35 BAGS SAMPLE ORE 415 S SAN PEDRO COLYEAR VAN & STGE	50	
MONEY			
Total			
Exemption H H	Vet.		
Net Total	Rate 5.2333		$
Solvent Credits	Rate 001		$
TOTAL TAX NOW DUE AND PAYABLE			$ 2.61

1939-40

Make all Remittances Payable to

JOHN R. QUINN, County Assessor
Room 401, Hall of Justice
Los Angeles California

THIS BILL, WHEN PROPERLY STAMPED HERE BECOMES A RECEIPT FOR PAYMENT OF TAXES ON PROPERTY DESCRIBED HEREON FOR THE FISCAL YEAR JULY 1, 1939 - JUNE 30, 1940.

$ 2.61 Tax
No. 47754

(Stamp) No. 7256-C Law Heiser vs. Woodruff, Woodruff Exhibit No. D Filed 6 23 1939. R. S. Zimmerman, Clerk. By Cross, Deputy Clerk.

Important Inforanation

1. Unsecured property taxes are due and payable immediately upon assessment.

2. The assessor may collect unsecured taxes by seizure and sale of any personal property owned by the person against whom the tax is assessed.

3. A penalty of eight per cent shall be added to all unsecured personal property taxes, unpaid on September first.

4. Unsecured taxes not collected by the assessor on or before the last business day in July shall thereafter be collected by the tax collector. After the last business day in July make remittance payable to, and mail direct to the tax collector.

5. The assessor accepts checks, drafts, and money orders only as agent of the taxpayer for his accommodation, and assumes no responsibility for delay in depositing items for collection, for the loss of such items or the proceeds thereof in transit, or for losses through the failure or neglect of any institution used in the collection thereof or upon which said items are drawn.

6. Taxes levied, as hereon stated, may be made a lien upon real property, if in the judgment of the assessor such real property is of sufficient value. If this is desired a real estate return must be filed with the assessor on or before July 2nd.

7. Please bring this bill with you to the office of the assessor when you make your real property declaration, or are paying the taxes on this bill.

Re No. 2593 M
Langhan ete Bankrupt
v
Woodruff Trustees
Exhibit No. 1
Filed 4/22 1932
Moss Referee

Re No. 13393-J
Golden State Gem Bankrupt
Obj claim Heiser Trustees
Exhibit No. 1
Filed 4/22 1932
Moss Referee

Objector's Exhibit # Q 4

ORIGINAL BILL OF LADING

FORM 192

Date Aug 7 1928

Received by LOS ANGELES STEAMSHIP COMPANY, hereinafter called Carrier,

FROM E A Labree Harvard

Consigned to Mrs Mertice Heisdal (Heisen)

Destination 90 Golden State Fruit Los Angeles

Route

MARKS AND NUMBERS (As given by Shipper)	NO. PKGS.	DESCRIPTION OF ARTICLES (As given by Shipper)	WEIGHT (Subject to correction)		
	36.	Packs Mech Corrugations (One)	4325		

EXHIBIT No. 1256

NOT INSURED

Charges Advanced by Carrier $

Value of Shipment stated by Shipper $500.00

36

E A Labree

Mrs William Heisdal

(FOR CARRIER)

SIGNATURES BY INITIALS ONLY NOT ACCEPTED. NOR PRINTED SIGNATURES UNLESS SUBSCRIBED WITH FULL NAME OF SHIPPER'S AGENT

RELEASE. Shipper, desiring to secure benefit of the rates provided by Carrier's current tariff that may lawfully apply when merchandise is shipped on a released or declared valuation, hereby stipulates that the goods covered by this bill of lading are worth and all of the value of $ per

[At this point of objectors' exhibit QQ appears a receipt for delivered freight, August 16, 1928, Morrie Heiser to Pacific Electric Railway Company, which receipt was filed as defendant's exhibit F in case No. 7250-C, United States District Court, Southern District of California, Heiser vs. Woodruff et al. This receipt appears at page 683, and is, therefore, not reproduced again.]

Re No. 13393-J
Golden State Gem, Bankrupt
Obj claim Heiser Trustees
Exhibit No. 2
Filed 4 22 1932
Moss Referee

Re No. Q 93 M
Laughan etc Bankrupt
v
Woodruff Trustees
Exhibit No. 2
Filed 4 22 1932
Moss Referee

District Court of the United States, Southern District of California, Central Division.

United States of America, Southern District of California ss.

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby

certify that the foregoing is a full, true, and correct copy of Notice of Unsecured Property Taxes, filed as defendant's exhibit D; Bill of Lading, filed as defendant's exhibit E; and Receipt for Freight Delivered, filed as defendant's exhibit F, all in the case of Heiser v. Woodruff, No. 7256-C Law, as the same appears from the original record remaining in my office.

Witness my hand and the seal of said Court, this 23rd day of October, A. D. 1940.

R. S. ZIMMERMAN, Clerk.
By FRANCIS E. CROSS, Deputy Clerk.

(Seal)

Objectors' Exhibit RR.

In the District Court of the United States for the Southern District of California, Central Division.

Hon. George Cosgrave, Judge Presiding.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al. Defendants. No. 7256-C—Law.

Reporters' Transcript of testimony and proceedings on presentation of evidence as to the value of the property of plaintiff herein for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff, without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of plaintiff for which damages were allowed in said judgment against defendant Leonard Woodruff, etc., pursuant to order filed June 8, 1939.

Appearances: Leonard J. Meyberg, Esq., for the Plaintiff; Ames Peterson, Esq., and Robert L. Beveridge, Esq., for Defendant Leonard Woodruff.

MAURICE EMANUEL HEISER, the plaintiff herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination.

Q. By Mr. Meyberg: What is your full name?
A. Maurice Emanuel Heiser.
Q. Mr. Heiser, you are the plaintiff in this action?
A. Yes, sir.
Q. Mr. Heiser, how long have you been in the gem business?
A. Over 30 years.
Q. During that period of time have you bought and sold rough gems?
A. Yes.
Q. Of various types?
A. Yes.
Q. Including sapphires?
A. Yes.
Q. Opals?
A. Yes.
Q. Zircons?
A. Yes.
Q. Have you ever mined those stones, Mr. Heiser?
A. Yes, sir.
Q. How long ago, and for how long have you mined them?
A. For about 16 years I was mining.
Q. Where?
A. In the Anakie field of Queensland, and in the New South Wales field; that is in the other state.
Q. At about what period of time?
A. In the Anakie field?
Q. In and about what period of time did you mine?
A. From 1911 right up until 1928.
Q. Did that include the mining of sapphires?
A. Yes, sir.
Q. And of opals?
A. Yes, sir.
Q. And of zircons?
A. Zircons, yes.
Q. Did you ever attend college?

A. Yes.
Q. In mining?
A. Yes.
Q. What college?
A. Mt. Morgan School of Mines, Queensland, Australia.
Q. How long did you attend?
A. Two years.
Q. For how long have you been buying and selling such material, Mr. Heiser?
A. All my life, sir; ever since I started mining.
Q. That is for how long?
A. Just over 30 years.
Q. At what points, and what places have you sold such material?
A. We sell on the mines in Australia, and in London, Manhattan Garden, and Germany, the Dutche Edielstien, Gutshiff, and St. Cloud, the French-Swiss border, and St. Maurice, the Swiss-French border, and I have sold through Paris and through Russia. I have sold all over the world.
Q. During what period, or how long have you done that?
A. Out of approximately 20 odd years; 22 years, sir.
Q. During that period of time have you been dealing in rough stones, as well as cut stones?
A. Chiefly rough, sir.
Q. Do you understand cutting stones?
A. Yes, sir.
Q. Cutting sapphires?
A. Yes, sir.
Q. Can you cut them yourself?
A. Yes, sir.
Q. Have you done so?
A. Yes, sir.
Q. And zircons?
A. Yes, sir.
Q. Opals?
A. Yes, sir.
Q. For how long a period of time have you actually done that yourself?
A. I represented the Queensland government at the Panama Exposition, as their expert cutter for demonstration, in

1915, in San Francisco, cutting, to demonstrate how gems were cut, and how they are mined.

Q. How many dollars worth of rough material, including sapphires, zircons and opals, would you say you had dealt with in the last twenty years, and sold, for instance?

A. Approximately a million and a half dollars worth.

Q. Does that include mechanical industrial rough sapphire?

A. Yes.

Q. Does that include blue sapphires, rough?

A. Yes, sir.

Q. And does that include star sapphires, rough?

A. Yes, sir.

Q. And does that include opals, black and light, rough?

A. Yes, sir.

Q. Does that include zircons, rough?

A. Yes, sir.

Q. You have dealt generally for the past twenty years in all of those rough materials?

A. Yes, sir.

Q. And have sold them throughout the world?

A. Yes, sir.

Q. In the points you have stated?

A. Yes, sir.

Q. Directing your attention to the allegations of paragraph VI of the complaint, on page 3, to the 35,000 ounces, more or less, of mechanical industrial rough sapphire, are you familiar with the value of that material?

A. Yes, sir.

Q. In and about May of 1929?

A. Yes.

Q. Had you, prior to that time, bought and sold quantities of it?

A. Yes.

Q. Sold quantities of it that large, prior to that time?

A. As large as what?

Q. As large as 35,000 ounces?

A. Not in one bulk. We have sold up to 15,000 ounces in one bulk to the Dutche Edielstien Gutshiff Company, Germany.

Q. What year?

A. I think it was about 1929.

Q. Had you sold it prior to that time?

A. Yes.

Q. What was the value of 35,000 ounces of mechanical industrial rough sapphire in and about May, 1929, Mr. Heiser?

Mr. Peterson: I object to that upon the ground that no proper foundation has been laid. There is no showing what this material was; that he was the owner of it, or anything else. I want to know, is this supposed to be material this man bought, before he expresses an opinion as to the value of it?

The Court: The question is directed to the 35,000 ounces described in the complaint?

Mr. Meyberg: Yes, your Honor. I commenced my question that way. Let us have the question.

Mr. Peterson: I may have missed it.

(Question read by the reporter.)

Mr. Meyberg: —described in the complaint—we will add that to the question. You understand that I am speaking of the material described in the complaint?

A. Yes, sir. That would sell from three and sixpence to five and sixpence an ounce at that time.

Q. Translate that into dollars, at that time.

A Eighty odd cents an ounce, to about $1.36.

Q. I direct your attention to the 1200 ounces of blue sapphires, rough, referred to in the complaint, in paragraph VI, page 3: In and about May, 1929, are you familiar with the value of that material?

A. Yes, sir.

Q. What was the value per ounce?

Mr. Peterson: What material?

Mr. Meyberg: The 1200 ounces.

A. $60 an ounce.

Q. 1200 ounces of blue sapphire, rough?

Mr. Beveridge: How much?

A. $60 an ounce.

Q. By Mr. Mayberg: Had you sold material of that general description?

A. Yes, sir.

Q. And general type, in and about that time, before that time?

A. Yes.

Q. At what price?

A. Ranging from $50 up to one-hundred odd dollars an ounce, sir.

Q. Had you sold mechanical industrial rough sapphires, similar to that, to which I have referred, at or about that same time in 1929, or within a year or so previous to that time?

A. Yes, sir.

Q. At prices ranging from 80 cents to a dollar and thirty cents an ounce?

A. Yes, sir.

Q. I direct your attention to 1000 ounces of star sapphire, rough, referred to in the complaint. Are you familiar with the value of that material at or about May, 1929?

A. Yes, sir.

Q. What was the value of that material?

A. $50 an ounce.

Q. I direct your attention to 1200 ounces of opals, black and light, rough, referred to in the complaint. Are you familiar with the value of that material in and about May, 1929?

A. Yes, sir.

Q. Had you sold material of that nature in and about that time, or prior thereto?

A. Yes, sir.

Q. What was the value of that material?

A. $15 an ounce.

Q. Referring to the 1000 ounces of zircons, rough, referred to in the complaint,—are you familiar with the value of that material at or about May, 1929?

A. Yes, sir.

Q. Had you sold and dealt in that type of material prior to that time, and in or about that time?

A. Yes.

Q. What was the value of that material?

A. $10 an ounce.

Q. Referring to the piece of jade that is set out in the complaint, weighing 28 pounds—are you familiar with the value of jade?

A. Yes, sir.

Q. Were you at that time?

A. Yes.

Q. What was the value of that particular piece of jade in and about that time?

A. It was worth anything from $1000 to $5000, depending upon what it was needed for.

Q. Mr. Heiser, you had occasion yesterday, at the Colyear warehouse, to see two pieces of material, two halves of material—that is, one piece of material sawed in half, of black material, is that correct?

A. Yes, sir.

Q. What was that?

A. Obsidian; volcanic glass.

Q. Has it any value?

A. Not to my knowledge.

Q. Did that look anything like jade?

A. No.

Q. Do you know what Australian—

A. New Zealand?

Q. Do you know what New Zealand green stone is?

A. Yes, sir.

Q. Would you call that New Zealand green stone?

A. No, sir.

The Court: Call what?

Mr. Meyberg: The piece that he saw.

The Court: Obsidian?

Mr. Meyberg: Yes, obsidian, your Honor. I might suggest that the purpose of this is, one witness had stated he saw two pieces of material there that were not jade; they were some kind of green stone. That is my purpose of interrogating the witness in regard to that.

Q. I direct your attention, Mr. Heiser, to a conversation attended by you in and about May 9, 1932. Do you recall

having been present at the southwest corner of Eighth and Spring, in or about that time?

A. Yes, sir.

Q. Was Mrs. Woodruff present?

A. Yes.

Q. Was Mr. Howard Woodruff present?

A. Yes.

Mr. Peterson: I don't see why he should lead his own witness. I object to it.

Mr. Meyberg: This is impeachment, your Honor. I am asking whether or not these different people were there.

Mr. Peterson: Counsel knows without asking leading questions, it is not done in that manner.

The Court: You can direct an impeaching question; you can direct the witness to specific statements, but not in this respect. The objection will be sustained upon the ground that the question seems to be leading.

Q. By Mr. Meyberg: Did you, at or about May 9, 1932, or at any other time, or at all, at a moving van, or in a van or truck, at Eighth and Spring Streets, in the City of Los Angeles, or at any other place, in the presence of Mrs. Woodruff and Mr. Howard Woodruff, or either of them, state in sum, substance or effect, that all of your material was there?

A. No, sir.

The Court: You said no?

A. Yes, sir.

Mr. Meyberg: He said no, your Honor.

Q. Do you know where the District Attorney's office of the County of Los Angeles is?

A. Yes, sir.

Q. Do you know where the Hall of Justice is?

A. Yes, sir.

Q. Do you know where the Federal Building is?

A. Yes, sir.

Q. And where it was in 1932, in May?

A. Yes.

Q. You knew where all of those places were in 1932?

A. Yes, sir.

Q. Did you ever have any occasion, or did you ever examine any of this material at any of these places, or in front of any of those places?

A. No, sir.

Q. Or near any of those places, except Eighth and Spring?

A. At Eighth and Spring.

Q. At Eighth and Spring?

A. Yes, that was all.

Q. Did you see some of this material down at Colyear's warehouse, in or about May, 1932?

A. Yes, sir.

Q. At that time did you weigh it, or see it weighed by some one?

A. Yes; it was weighed.

Q. Did you examine it at the warehouse?

A. I just had a look at some of the bags as they were being opened and tied up.

Q. Had you already examined it on the van, prior to that time, at Eighth and Spring Streets?

A. Yes, sir.

Q. Did you make any statement at the warehouse, in sum, substance or effect, that all of the material was there?

A. No, sir.

Q. Did you ever make such a statement?

A. No, sir.

Q. Do you know Mr. Francis Cobb?

A. No; I don't think I have ever seen the gentleman.

The Court: Who is that?

Mr. Meyberg: Mr. Francis Cobb.

Q. Do you know Mr. Woolwine, when you see him?

A. Yes, sir.

Q. Was he present at the time you examined some of this material at Eighth and Spring Streets?

A. Yes, sir.

Q. In or about May, 1932?

A. Yes, sir.

Mr. Meyberg: You may ask.

Cross Examination

Q. By Mr. Peterson: Did I understand, Mr. Heiser, that you brought the material here, or caused it to be brought, such as described in your complaint?

A. It was shipped.

Mr. Meyberg: That is objected to as immaterial. That is not in issue here.

Mr. Peterson: Oh, yes.

Mr. Meyberg: As to what he brought here?

Mr. Peterson: You have inquired about the matter; your complaint alleges he owned it. We are concerned with the value. I want to know how it got here. It would throw considerable light upon the value, to show what he paid for it.

The Court: Yes.

Q. By Mr. Peterson: You may read the question.

(Question read by the reporter.)

A. Yes.

Q. Did you obtain all of the material described in your complaint from the same country?

A. All from Australia.

Q. Did the material described in your complaint leave Australia for the United States from the same port?

A. That I am not sure, sir.

Q. Did it arrive here in one shipment?

A. That I am not sure of, either.

Q. But you had it sent, didn't you?

A. Pardon me, if I may; Your Worship, tell you the way it was shipped. The Queensland government had me come to represent them, and that material was all shipped as an exhibit by the government at the Panama Exposition. I think it came over in several different shipments because of the different exhibits.

Q. I thought you just told me you had it shipped.

A. It was shipped by the Australian government and left here.

Q. Was it property of the Australian government?

A. No; it was my property. We had it shipped from

Australia to America, to Los Angeles, and to San Francisco.

Q. I am asking you a very plain question. You say this was your property?

A. Yes, sir.

Q. I am asking you from what port or ports in Australia it was shipped to the United States.

The Court: The witness has answered, I think, that he wasn't sure. It might have been shipped from several ports. Am I correct?

A. Yes, your Worship.

Q. By Mr. Peterson: To what port in the United States did it come?

A. I think San Francisco.

Q. You were here to receive it?

A. No, sir.

Q. But your best recollection is it was San Francisco?

A. I think it was San Francisco.

Q. Will you please tell me the date when it arrived here?

A. I couldn't answer that.

Q. Approximately?

A. It was some time in 1914.

Q. So I gather from your testimony then that this material, that is—

A. Pardon—

Q. Just a minute. If my question is not clear you may ask me. Mr. Reporter, may I have the question?

(Question read by the reporter.)

Q. —that is, all of it that is described in your complaint, arrived in San Francisco before the opening of the 1915 Exposition?

A. Yes.

Q. And you were the owner of that property?

A. Yes, sir.

Q. What duty did you pay the United States government when it arrived here?

A. I don't think they pay—

Mr. Meyberg: I object to that as being immaterial.

Mr. Peterson: It throws light upon value.

The Court: Overruled.

Q. By Mr. Peterson: Will you answer the question?

A. I didn't pay any duty on it. The Australian government arranged for the duties.

Q. You paid no duty?

Mr. Meyberg: Just a minute.

The Court: Did the Australian government arrange for all duties?

A. That is correct, sir.

Q. By Mr. Peterson: Just so we are clear? You did not pay any duty yourself?

A. No. It was given to me—

Q. Pardon me—

Mr. Meyberg: Let him explain his answer if he wishes to.

The Court: Proceed with your questions, Mr. Peterson.

Q. By Mr. Peterson: Do you know whether the Australian government paid any duty on this?

A. I am not sure, sir, but no doubt they would have done it.

Q. I am not asking you that. You may answer whether you do know or do not know.

A. I am not sure.

Q. Was the property described in your complaint ever returned to the Australian government?

A. No; it was my property.

Q. It never was sent back to Australia?

A. No; it has remained in this country.

Q. Did you ever at any time, from the time it was brought here up to the present minute, pay the United States government any duty upon that property?

A. Personally, I didn't.

Q. Do you know of anyone in your behalf who ever paid one cent of import duty to the government of the United States on that material?

A. Your Worship, can I explain the conditions that prevailed?

The Court: No, Mr. Heiser. The rule is to answer the

question; and then you may explain it, but before we go into that, I don't know just whether the court is interested in that or not, Mr. Peterson, as to whether anybody should or should not pay duty on this. I don't think that the court is particularly interested in that.

Mr. Peterson: Can I make my point clear?

The Court: Yes.

Mr. Peterson: My point is this: We know the court will take judicial notice of the fact that precious stones, gems and things of that kind, coming into the United States are dutiable, and the duty that they pay is in exact proportion to their value.

Mr. Beveridge: 10 per cent.

Mr. Peterson: Whatever it is. That is a matter of judicial notice. He says that the Australian government arranged for these gems to come here, evidently for the specific purpose of being exhibited at the 1915 exposition at San Francisco. So far well and good.

Mr. Meyberg: There is no such evidence as that.

Mr. Peterson: That is the way I understood him. As I recall his testimony he said that the property was sent here by the Australian government to the Pacific Exposition we had in 1915, evidently as an exhibit. Now, I want to show by him that the material remained here, and was eventually put into some commercial use, or attempted to be put into such use, but no duty on it was ever paid to the government, as going to show value.

The Court: If duty were paid, yes, you might properly inquire; and I take it, on your theory, if no duty were paid, however, and that is the testimony, I believe, that is the end of it, it would seem to me.

Mr. Peterson: Yes; I think you are right.

The Witness: Your Worship, may I explain?

The Court: No; we are not here looking after the interests of the United States government.

A. But there is no duty on rough stone.

The Court: The court will overrule it, and will permit you to interrogate in that particular.

A. I beg your pardon, Your Worship?

Q. By Mr. Peterson: So, to pursue my inquiry, from the time that the stones arrived here in 1914, was it, or 1915?

The Court: I think 1914.

A. In the early part of 1914.

Q. By Mr. Peterson: They have been here, so far as you know, ever since?

The Court: What.

Mr. Peterson: They have been here in America, so far as he knows, ever since?

A. Yes.

Q. Where were these stones, Mr. Heiser, such as you have described in your complaint, from the close of the exposition in 1915 down to 1928?

Mr. Meyberg: I object to that as immaterial, as to where they were, your Honor.

The Court: Overruled.

Q. By Mr. Peterson: Where were they?

A. I think in the Wells Fargo Nevada Safe Deposit Company.

Q. In San Francisco?

A. Yes, sir.

Q. All that time?

A. Yes.

The Court: The Wells Fargo Nevada what?

A. The Wells Fargo Nevada Bank, Safe Deposit Department.

Q. By Mr. Peterson: That is in San Francisco?

A. Yes.

Q. Did you pay the storage on that?

Mr. Meyberg: That is immaterial, your Honor, and I object upon the ground that it is immaterial, whether he paid the storage or not.

The Court: Sustained.

Q. By Mr. Peterson: Were those gems taxed?

Mr. Meyberg: I object to that as immaterial, whether they were or not.

Mr. Peterson: It goes to show value.

A. I am not sure, sir.

Mr. Meyberg: Just a minute, Mr. Heiser.

The Court: You may ask if they were taxed.

Mr. Meyberg: May I make my objection, your Honor?

The Court: Certainly. I understood you had objected.

Mr. Meyberg: I don't know whether I had the ground of the objection in. I object on the ground that it is immaterial, and it doesn't tend to prove any value.

The Court: I am assuming there is something follows this that will indicate they were taxed, on the same line as the assessor's testimony here.

Mr. Meyberg: May I add to my objection that it would still be objectionable on the ground that it is immaterial: that the assessed value doesn't, in this state, tend to prove value for market value.

The Court: It goes to the weight of the evidence. You can add that objection, and the objection will be overruled. Proceed.

Mr. Peterson: May I have the question?

(Question read by the reporter.)

Q. What is the answer?

A. I am not sure.

(The court here took an adjournment until 2:00 o'clock in the afternoon.)

(Whereupon an adjournment was taken until 2:00 o'clock p. m. of this day.)

Afternoon Session 2:00 o'clock.

MAURICE EMANUEL HEISER recalled.

Cross Examination resumed.

Mr. Peterson: I was asking the witness as to whether he paid any duty on this rough sapphire material, and he said he didn't. Mr. Meyberg says he checked with the collector during the noon hour, and there isn't any import duty on it.

Mr. Meyberg: The collector informed me he had been with the office thirty years, and Mr. Heiser, when he came on the stand, stated he never had heard of any duty, and I checked with the inspector, and he told me he had been in office for thirty years, and there never had been any duty on rough sapphire material; that there was no duty. I informed Mr. Peterson that I thought we had better make a statement to the court to that effect.

Q. By Mr. Peterson: Did you pay any duty to the United States government upon any of the material that you brought in?

A. At what time do you mean?

Q. When you brought it in.

A. At various other times.

Q. When you brought the material, the subject of this litigation, into the United States, did you pay any duty to the United States government on it?

A. I never brought this in. I said the Queensland government brought it in.

Q. You paid no duty at all?

A. No, sir.

Q. Do you know of any duty that was paid?

A. No, sir.

Q. Mr. Heiser, in August of 1928 you were married, were you not?

A. August, 1928?

Q. Yes.

A. Yes, sir.

Q. Your wife's name was Mrs. Lillian Heiser?

A. Yes, sir.

Q. You would, of course, recognize her signature, I take it?

A. Yes, sir.

Q. I will identify the signature. I will ask you if, at the bottom of this yellow sheet that I am now exhibiting to you, the signature, Mrs. Lillian Heiser, is the signature of your wife.

A. I think it is, sir.

Q. You know your wife's signature, don't you?

A. Yes.

Q. It is your judgment that is her signature?

A. Yes; it looks like it, sir.

Q. Now, I will ask you if the 36 sacks, with the weight of 4325 pounds, is the gem material referred to in this action?

A. The gem material referred to, yes, sir.

Mr. Peterson: This document will be offered in evidence at this time as Defendant Woodruff's next exhibit.

Mr. Meyberg: Objected to as incompetent, irrelevant and immaterial, as to any issue involved here.

Mr. Peterson: It is for the purpose of proving value.

The Court: You had better pass it up.

Mr. Peterson: I will, your Honor.

The Court: What does it purport to be?

Mr. Peterson: It purports to be a valuation signed by this gentleman's wife, upon the merchandise in controversy here.

The Court: What is the nature of the document?

Mr. Peterson: It is a storage receipt, isn't it?

A. You didn't let me read it; you just showed me the signature.

Mr. Peterson: It is a storage receipt, a bill of lading and storage receipt.

The Court: Issued by a steamer?

Mr. Peterson: It should show at the top.

The Court: It appears to be received from C. A. Lobri, to be forwarded, in whole or in part on the steamer Havre, or such other steamer, and so forth—very well.

Mr. Meyberg: I think it is a bill of lading, your Honor.

Mr. Beveridge: We are offering the receipt and bill of lading.

Mr. Meyberg: Is it a receipt also?

Mr. Beveridge: Yes.

Mr. Peterson: I want the bill of lading marked as the first exhibit.

The Clerk: That will be Defendants' Exhibit E.

Mr. Meyberg. You are calling that a bill of lading.

Mr. Peterson: For the purpose of the record—it may be something else, but for the purpose of the record, so that the court may be acquainted with what this shows, it shows 36 sacks of mechanical corundum of a weight of 4325 pounds. The person signing it appearing to be Mrs. Lillian Heiser, and her statement as to the value of the shipment is $500.00, and the document also shows that the shipment was not insured. If you have anything else you want to call to the court's attention, I will let you do it.

Mr. Meyberg: Where did you read from, Mr. Peterson, that there was any statement that the value of the shipment was $500.00?

Mr. Peterson: Value of shipment stated by shipper, $500.00.

Mr. Meyberg: $500.00 is stamped, and an extra 75 cents paid for insurance on it.

Mr. Peterson: And it says: "Not insured."

Mr. Meyberg: It says, "Shippers desiring carrier to insure at expense of shipment, owner or consignee, must show shipping value and sign below." It is signed C. A. Lobri by Mrs. Lillian Heiser, and it purports to be a bill of lading.

Q. By Mr. Peterson: I will ask you whether you have

ever seen the document which I am now exhibiting to you, and which seems to be entitled: Receipt for freight. Do you recall that you have ever seen that document before?

A. I am not sure, sir.

Q. Will you look at it and see whether you can be sure?

A. No; I don't recall having seen that before.

Q. You wouldn't say whether you did or did not?

A. No. Someone signed my signature there. That isn't my signature.

Q. That isn't your signature?

A. No, sir.

Q. But you recognize the weight? You recognize over here the letters 35 sacks of mechanical ore?

A. Is that 35, sir? It looks like 36 to me, or 26. It is not very clear.

Mr. Meyberg: It speaks for itself, doesn't it, Mr. Peterson, whatever it is?

Q. By Mr. Peterson: You recognize the weight, 4325, do you?

A. I don't know what you mean.

Mr. Meyberg: I object, may it please the court, to the question is unintelligible: You recognize such and such as such and such.

The Court: This proceeding is unintelligible for the court. What have you got there?

Mr. Peterson: I will straighten up the record now. I should not have talked to him that way. I have shown him a receipt for freight delivered, which shows that there was received from the Pacific Electric Railway certain sacks of mechanical ore, of a weight of 4325 pounds, and I have endeavored to have the witness identify, if he can, that document.

A. I can't identify it.

Mr. Peterson: He says he couldn't do so, so I shall not pursue it. I will, however, ask that that be marked as an exhibit for identification at this time.

The Court: Very well.

The Clerk: Defendants' Exhibit F for identification.

The Court: What was that other document?

The Clerk: E, your Honor.

Q. By Mr. Peterson: In the bankruptcy proceeding, Mr. Heiser, of the Golden State Gem Company, you filed a claim for the value of this material that is here in controversy, did you not?

A. No.

Q. You never filed any claim at all?

A. No. My brother-in-law did. I was in London for that period, Your Worship.

Q. A claim was filed on your behalf, by your brother-in-law?

A. My brother-in-law filed a claim, that is correct.

Q. Did you authorize him to do so?

A. I was in London at the time.

Q. I am asking you whether, by any correspondence or otherwise, you authorized your brother to file a claim?

A. I don't think that particular claim.

Q. Did you later?

A. I came over to America from London, I think, two years later.

Q. I am just asking for the facts. If you never authorized your brother to do anything in this connection for you, you may say so.

Mr. Meyberg: I object to that as calling for a conclusion.

The Court: Proceed. Answer the question.

A. I don't recall doing so.

Q. By Mr. Peterson: Would you say that you did not do so?

A. I cannot recollect, sir.

The Court: What the court is interested in, Mr. Heiser, is this:—I haven't the remotest idea what this claim is—a claim apparently was filed in some bankruptcy proceeding. Very well. It purported to be, I guess, on behalf of Mr. Heiser?

Mr. Peterson: That is my understanding.

The Court: The question is, did you, impliedly or otherwise, authorize it?

A. I don't recall doing so, sir.

Q. What did you do afterwards? Did you ever disavow the claim?

A. When I came back here I tried to make the claim, Your Worship, and Mr. Moss, I think it was, disallowed the claim.

The Court: That will be enough. The question is whether, in any manner at all, you were a party to the making of that claim. Proceed.

Mr. Peterson: And his answer, as I take it, was that he was not; that his brother did it. Is that the way your Honor heard it?

The Court: He said his brother-in-law made it in his behalf, and he didn't get back until two years afterward.

Q. By Mr. Peterson: But you never disaffirmed or denied it?

A. No, sir.

Mr. Meyberg: If I may suggest, I think if is the word "authorized."

Mr. Peterson: I think we are all clear.

The Court: We are not going to dispute about the meaning of the word "authorized."

Q. By Mr. Peterson: I think you said that Mr. Woodruff did purchase from you about $2000 worth of this material and paid you for it?

A. Which material are you referring to, sir?

The Court: What?

A. He said this material. I don't know what he is referring to.

Mr. Peterson: I am referring to any of the material which was shipped down from San Francisco, and which is the subject matter of this litigation.

A. No, sir; I didn't say that.

Q. I am asking you if you did.

A. He never purchased anything from—yes, he purchased something from me, but not that material.

Q. In other words, so that we may be clear, and not at cross purposes, Mr. Woodruff did not purchase any of the material that was sent down from San Francisco by you?

A. I had gems sent down from San Francisco at various periods. Does Mr. Peterson mean personally, that came down on this invoice, or does he mean stuff that came down at other periods? Because this was all rough gems.

Q. Did Mr. Woodruff ever purchase from you, and pay you, for any of the gem material described in your complaint?

A. No, sir.

Q. Did you ever sell any of the gem material to anyone, the gem material that was shipped down from San Francisco?

A. In that shipment?

Q. I am referring to the material set forth in your complaint.

A. No, sir.

Mr. Peterson: With reference to the bankruptcy claim, Mr. Beveridge was engaged in that on different phases of that litigation. Would you permit him to ask a few questions on that?

The Court: Is there a bankruptcy claim?

Mr. Peterson: There was a bankruptcy claim. Yes. Have you got it here?

The Court: Possibly you can agree on the amount of the claim and value.

Mr. Beveridge: Do you want to stipulate he filed a claim for $30,250, in bankruptcy, through a power of attorney to his brother-in-law?

Mr. Meyberg: If the court holds that is competent, yes, I will stipulate with regard to it. I think those are the correct facts. I don't want to stipulate that it go in evidence.

The Court: Under the circumstances I draw the conclusion, the inference, that the claim was filed on behalf of the witness.

Mr. Meyberg: The claim was filed in behalf of the witness, your Honor, for $30,000 and some odd dollars, for certain material; for certain rough gem material, or, rather, rough sapphire material, whatever it was.

The Court: It would facilitate matters very considerably if you had the claim.

Mr. Beveridge: The claim was disallowed. He was allowed to withdraw it, after he did not appeal, after the claim was denied by the Referee in Bankruptcy.

The Court: That is what the court is interested in. It is in the claim itself. You don't have it there?

Mr. Peterson: No. It seems to have been withdrawn from the bankruptcy file. We can't find it.

Mr. Meyberg: Have you any record of the order permitting it to be withdrawn?

Mr. Peterson: I have not.

Mr. Meyberg: Do you know that it was withdrawn by any order?

Mr. Peterson: Only what Mr. Beveridge says.

Mr. Meyberg: I do that, because I will take Mr. Peterson's word for it.

The Court: The record is going to be very considerably complicated, I am afraid. I don't care to hear from anybody except Mr. Peterson now, and I will conduct my conversation with Mr. Peterson. My suggestion, Mr. Peterson, is that the claim itself be presented, be shown, but you say that that cannot be done; you say that it was filed, and the value given as $30,000. Does Mr. Meyberg agree that such was the amount of the claim?

Mr. Meyberg: I believe that the claim was $30,000 or $30,250. Which was it, Mr. Peterson?

Mr. Peterson: Yes; I have proof that the amount of the claim was $30,250.

The Court: The next question is: Is the subject of the claim the identical matter that we are inquiring about here?

Mr. Meyberg: I happen to know it is not, your Honor, but Mr. Peterson should interrogate the witness with regard to it. He will know.

The Court: That is the next step.

Mr. Peterson: We will endeavor to do so.

Q. Mr. Heiser, you were not here, I understand, when the claim was filed for you?

A. That is correct, sir.

Q. Did you thereafter see the claim that was filed for you?

A. I came back in 1932.

Q. Mr. Heiser, the question is plain, and we will get along very well if you will just answer it: Did you see the claim that was filed for you?

A. Yes, sir.

Q. Will you tell us—

A. I say yes: I don't mean I saw the claim in court. Mr. Barstow notified me, the attorney of Mr. Calvin Smith, notified me that he had notified Mr. Lobri that the industrial sapphires were taken from the vault by Mr. Woodruff. That's why the claim was presented there.

The Court: I don't care for that. Confine your answer to something relevant to the question.

Q. By Mr. Peterson: Did you actually see the claim that your brother procured to be filed for you in the bankruptcy court, in the amount of $30,250?

A. Not to my recollection.

Mr. Peterson: All right. Then I guess that clears that up. There are no further questions on cross examination.

The Court: Any redirect?

Redirect Examination.

Q. By Mr. Meyberg: Mr. Heiser, directing your attention to Defendant Woodruff's Exhibit E, that is noted in there as mechanical corundum ore.

The Court: What?

Mr. Meyberg: Corundum. I will ask you whether or

not that is a customary method of shipping all types of sapphire material in your business.

Mr. Peterson: I object to that upon the ground that this is not a matter of custom. This as a matter of what happened in this particular case, and it is incompetent. We are concerned with what this witness did; not what the custom might have been or might not have been.

The Court: That is very true. At the same time, if material of that kind had this trade name it would be proper to show it. That is what you are trying to show?

Mr. Meyberg: Yes; exactly, your Honor.

The Court: Objection overruled. Let the witness answer.

A. Yes, sir.

Q. By Mr. Meyberg: Do you know whether or not that was the general classification, permitted by the shipping companies?

A. Yes, sir.

Mr. Peterson: Just a moment. Let me interpose my objection. That question is objectionable. We are not concerned with what the shipping companies permitted, which would be hearsay as to Mr. Woodruff. As to what the witness did it is competent; otherwise it is not.

The Court: I thought it related to supplementing his previous testimony about the custom. I don't think you need show that the steamship company permitted it, if it was the custom.

Mr. Meyberg: I think that is correct. I withdraw the question.

Q. Has it been a custom in your business to ship sapphire material, both rough and cut, under that heading?

A. Yes, sir.

Q. And it is so listed at the time of the shipping?

A. Yes, sir.

Q. Does the shipment, as a custom, in your business, and the labeling of the material under that heading—does

that have any reference to the value of the material in your business, as a custom?

Mr. Peterson: I object to that upon the ground that it is hearsay.

The Court: It calls for the conclusion of the witness. In fact, I guess that is the ultimate fact for the court, isn't it? Objection sustained.

Mr. Meyberg: May I just make one suggestion, your Honor?

The Court: My suggestion would be that the witness enlighten the court as much as he can on this particular shipment, this particular lot of material.

Q. By Mr. Meyberg: Did you understand that question?

A. Yes.

The Court: Mr. Meyberg, I suggest that you turn the witness loose. Conduct the examination.

Q. By Mr. Meyberg: I direct your attention to the valuation of $500 stamped and written on that bill of lading. Will you tell us what that means in your business, or the purpose of it, if you know?

Mr. Peterson: I object to that upon the ground that the document speaks for itself, and it calls for a conclusion.

The Court: Objection sustained. It would be irrelevant.

Q. By Mr. Meyberg: In your business, in the last twenty years have you customarily shipped back and forth quantities of gem material?

A. Yes, sir.

Mr. Peterson: Just a minute—

The Court: That question may be answered.

A. Yes.

Q. By Mr. Meyberg: In so doing, in your business, as a matter of custom, do you place the value, the actual value of the material shipped on the way-bill?

A. No.

Mr. Peterson: I object—

The Court: Let the objection come before the answer.

Mr. Peterson: I object, your Honor, that what he does would be hearsay and immaterial. We are not concerned with his custom, it not being shown that Mr. Woodruff knows anything about his custom, and is not bound by any custom he might have. The force of my objection goes to what he does as a matter of practice. We are here concerned with what he did.

The Court: Overruled. Let the answer stand. He said no.

Q. By Mr. Meyberg: Was the value of that shipment in excess of $500, Mr. Heiser?

A. Yes.

Q. What was the value of that shipment, the true value of it?

Mr. Peterson: Objected to upon the ground that the proper foundation has not been laid for the asking of this question.

The Court: In what respect?

Mr. Peterson: Because he hasn't told us what was in the sacks altogether. However, I will withdraw it. It is true we haven't definitely identified it.

The Court: Very well.

A. $164,000.00.

Q. By Mr. Meyberg: Do you know the reason for placing—don't answer the question until Mr. Peterson has had an opportunity to object, if he wishes to—Do you know the reason for placing the $500 figure on that bill of lading? That calls for a yes or no answer.

Mr. Peterson: I won't object, if he wants to say yes or no, but I will wait for the next question.

A. Yes.

Q. What was it?

Mr. Peterson: Now, we object to that upon the ground

that it is not material to any of the issues here. The document speaks for itself. The evidence is before the court.

The Court: Overruled.

Mr. Peterson: Note an exception.

A. If I insure a package for $5,000, it has the same insurance protection as if I insure it for $50,000, or a half a million; it has the same protection in this country.

Q. By Mr. Meyberg: What do you mean by that?

A. I mean it is our protection; if you value it at $500 they put it in the same safe deposit, as where they put bonds and other material. Another reason, it stops pilfering. If you put "gems" on and a high value, you are liable to lose it by pilfering.

Q. Has that been the custom in your business, to do that?

A. Yes, sir.

Q. Now, Mr. Peterson asked you with reference to something that you had sold Mr. Woodruff. What was it that you had sold to Mr. Woodruff, and when?

A. Opal doublets, in July, 1928.

Q. Was that in the raw; or was that cut?

A. They were finished, sir.

Q. They were finished?

A. Yes, sir.

Q. Was it cut out of any part of the material mentioned in this complaint?

A. No, sir.

Mr. Meyberg: I think that is all.

Recross Examination.

Q. By Mr. Peterson: I want to be clear about this insurance business. My understanding of your explanation for putting the $500 insurance value upon this property was that if one were to insure it for its real value that would be apt to attract perhaps attention to the fact that there were valuable jewels there, and someone might come in and get them?

A. That wasn't what I said.

Q. What did you say?

A. I said they received the same protection if insured for $500 as if insured for a larger amount.

Q. Do you mean to say that if you insure a consignment of jewels for $500 with an insurance company, and have that insurance policy, and they were worth, say, $500,000, and they were stolen, or taken, or destroyed, that the $500 policy would cover the $500,000 value?

A. That is an entirely different conception. My contention is, and I refer to the case of people that are under bond, and who know valuable stuff, whether it is $500 or $50,000, it has the same protection.

Q. I don't quite understand you.

A. They have certain people placed under bond, in charge of valuable property, in whose possession it is when it is in transit, and these men are all responsible, and if I had them valued at $50 or $50,000, they would receive the same care.

Q. So we come back to the fact that this valuable shipment of gems, jewelry material, was insured by you for $500?

A. It was not insured by me. My wife sent it in my behalf.

Q. The fact is that when that stuff was moved, it had a $500 policy on it?

A. Three years ago I bought a policy on gems from the custom house for London, and seventy-two thousand odd dollars worth were shipped by the American Express to the custom house in San Francisco and were insured for only $500. I have the receipt in Mr. Meyberg's bag.

Mr. Meyberg: Those were shipped in the same manner, on the same valuation?

A. Yes, sir; exactly the same.

Mr. Meyberg: That is all.

The Court: Let me see Exhibits E and F. Mr. Heiser, this document, whatever it appears to be, a receipt—received by Los Angeles Steamship Company, hereinafter called the carrier, from E. A. Lobri, dated August 7, 1928—tell me all about this. Who is Mr. Lobri?

A. Mr. Lobri is my wife's brother-in-law, sir.

Q. Your wife's brother-in-law?

A. Yes, sir.

Q. Where was this sent from?

A. San Francisco.

Q. And to Los Angeles?

A. Yes, sir.

Q. By steamer?

A. Yes, sir; that's the steamer receipt, apparently, the Yale.

Q. Where were you at the time?

A. I was up here, sir. I was in Los Angeles. I was up here in Los Angeles. I had asked that the things be shipped on to me.

Q. And they were?

A. Yes.

Q. Just how did they ship it?

A. Apparently by boat, sir.

Q. How was it packed?

A. In bags and tins, sir.

Q. What kind of bags?

A. Australian corn bags; something like you would carry your wheat in here only a little coarser material.

Q. Such as they sack wheat in, in Australia?

A. Yes, sir.

Q. Is that the precise shipment that is in controversy here?

A. Yes, sir, your Worship.

Q. Industrial articles?

A. Yes, sir.

Q. Does that include 35,000 ounces, more or less, of mechanical industrial, rough, sapphires, and so forth?

A. Yes, sir.

Q. Did you have any insurance on that property at the time that it was being shipped on the steamer?

A. I think I had an insurance, sir, at that time.

Q. I must know what the fact is.

A. I think we carried insurance on it, sir, a truck policy in Lloyd's. I carried a policy in those days, a Lloyd's policy; protection against all merchandise, from London.

Q. No matter what it is?

A. Yes; it's a truck policy.

Q. You say you think you had a policy?

A. My brother-in-law generally kept those up for me, but that is an Australian policy. I am pretty sure it was still alive, because I left a month after that for London.

Q. Do you know how they were carried on the boat?

A. No, sir.

Q. Were they carried the same as so many sacks of flour or wheat, or something of that sort?

A. They would be carried something like they carry the bar silver; that is, they carry it on a special van. I think that is the way they were carrying it. I am not sure.

Q. They ship bar silver—you see them pile it on the ordinary express trucks?

A. That's right.

Q. That is the way it used to be. This is described as 36 sacks of mechanical corundum ore—"ore" in parenthesis?

A. Yes, sir.

Q. What was this concern against which a claim in bankruptcy was filed?

A. The Golden State Gem Company.

Q. The Golden State Gem Company? That is the corporation that originally, according to the allegations of the complaint, was the agency through which this material was to be marketed, I believe, is that correct?

A. Yes, Your Worship.

Q. Just who filed this claim in the bankruptcy matter?

A. At the beginning, sir?

Q. At the beginning.

A. I was out of the company then. I am not sure. It was either Mr. Smith or Mr. Woodruff.

Q. Both counsel were asking you about it?

A. Yes, sir.

Q. I have reference to the claim mentioned in the questions asked you.

A. Mr. Smith or Mr. Woodruff; I am not sure which one filed it in bankruptcy.

Q. What is the history of this bankruptcy claim? The witness was asked if the claim wasn't filed in his behalf. What is the subject of that claim?

A. The lawyer for Mr. Smith and Mr. Lobri, by brother-

in-law, told him the identical sapphires were taken out of the United States National Bank—

Q. We had better avoid what is unnecessary. I said, What was the subject of the claim? Was it these identical stones?

A. We did not know that the blue sapphires, the zircons, the opals and the jade had gone, not until I came back from London.

Q. That however, is the bulk of this, wouldn't you say, the 35,000 ounces?

A. Yes; the greater portion, but not so much in value.

Q. Who is your brother-in-law, and where is he now?

A. Mr. Lobri; I think he is in Montana. He travels through the country, sir.

Q. You are friendly with him?

A. Oh, yes; quite friendly.

Q. He filed the claim, if not without authorization from you, at least with your consent, with your willingness, for the amount of the sapphires, is that correct?

A. Yes; he worked in the things for me whilst I was out of the country.

Q. Where did he get his idea as to their being worth? What was it?

Mr. Meyberg: $30,250.

A. He received a letter to that effect from Mr. Smith's attorney, Mr. Barstow.

Q. Was Mr. Barstow your counsel at the time?

A. No, sir. I had retained Mr. Beveridge as my counsel when I came up here, but some one told me he was being retained also by Mr. Woodruff.

Q. That is not necessary to ascertain the value of the gems?

A. No, sir.

Q. So we will leave that out.

Mr. Meyberg: May I have the bankruptcy file, your Honor?

Q. By the Court: Do you know what the basis of your brother-in-law's action was?

A. Just that he received a letter that 30,000 ounces of

identical sapphires were taken from the United States National Bank, and he figured them at $1 an ounce.

Q. How long had he been your brother-in-law?

A. About eight or nine years.

Q. Were you associated with him in business?

A. No; he is in an entirely different business, but he used to help me, and attend to things whilst I was out of the country.

Q. What line of business was he in in 1932? Is that the date of the bankruptcy proceedings?

Mr. Meyberg: About that time.

A. He was in cloak, dressings, and linen material and things of that sort.

Q. Nothing associated with mineralogy?

A. Nothing at all about mineralogy.

Q. Apparently he was connected with this shipment down here?

A. I think he was just helping my wife.

Q. Where is your wife?

A. She is in San Francisco.

Q. You are still, of course, in the same business?

A. Yes, Your Worship.

Q. You are not a resident of Los Angeles?

A. No, sir.

Q. What place do you claim is your residence?

A. London and Australia.

Q. You are a native of Australia?

A. No; I am a native of London, sir.

The Court: No further questions.

By Mr. Meyberg: Q. Mr. Heiser, did Mr. Beveridge, attorney for Mr. Woodruff here, represent you in connection with the prosecution of that claim at one time?

A. Yes, sir.

Mr. Meyberg: We offer the judgment docket of the bankruptcy.

The Court: What claim are you referring to?

Mr. Meyberg: The claim of this $30,250, your Honor.

The Court: Do you mean against the bankruptcy estate?

Mr. Meyberg: Yes, your Honor.

Mr. Peterson: Let me see what it is, Mr. Meyberg. We are not trying Mr. Beveridge.

Mr. Beveridge: I can clear that up. It is all right, your Honor; no objection.

Mr. Meyberg: M. E. Heiser, by E. A. Lobri, his attorney in fact, as the claimant, filed February 20, 1930, under the allowed claim, it says: Disallowed. Amount $30,250.00. Attorney Robert L. Beverly and S. A. Macfarland. Just that part of it we will put in evidence.

Mr. Peterson: For the sake of the record—

The Clerk: Is this to be marked, your Honor, Plaintiff's Exhibit?

Mr. Meyberg: It may be marked Plaintiff's Exhibit next in order.

The Court: Yes; let it be marked.

The Clerk: That will be Plaintiff's Exhibit No. 7.

Q. By the Court: Mr. Heiser, these materials came, in the first place, to the 1915 Exposition at San Francisco, did they?

A. Yes.

Q. And they have been in the country ever since?

A. Yes.

Q. You were there in charge of that exhibit?

A. Yes.

Q. Where were they between 1916, say, the beginning of 1916, and 1928?

A. They were the majority of the time in the Wells Fargo Bank.

Q. In San Francisco?

A. Yes, sir.

Q. They were owned by you all the time?

A. Yes, sir.

Q. How did it come that they were lying there without action on the part of anyone?

A. I did not need them. It was a reserve, sir. We mine the stuff in Australia and ship it to different parts of the world, and don't touch it. For instance, in the Lincoln vaults I had a parcel for ten years, and didn't touch it. I have a parcel in London we don't touch. The industrial sapphire is very important in time of war; one of the most important things in connection with war, sir. That is why I have been keeping these reserves in different parts of the world. In fact, they can't wage an important war without sapphire; which is used, for instance, in the rifling of cannons. They call that rifling in this country. They call it worming there.

Q. At any rate, they had been lying here about 12 years without any action?

A. Yes. I was mining in Australia, and was putting dredges up in Australia.

Q. Do you recover these sapphires by dredging?

A. There are two processes. I invented a process which enables you to save by the dredging process.

Q. How can you tell sapphires from anything else?

A. We sight them by sifting like you sift flour; you shake it under water, and it has a specific gravity of 3½, and you have a peculiar shake with the wrist. You turn the sifter, and the sapphires and the zircons, by centrifugal force are brought to the center. You catch diamonds in the center also this way. That's the only way in vast production.

Q. Based on weight?

A. Yes. You shake it, and give it a turn with the wrist, and each time you shake it the centrifugal force brings it to the center. That is, in South Wales, but in Queensland they do it with a rotary process. It is a knife machine.

Q. What would you say is your place of business at the present time—London?

A. Yes; London. If anyone wants to find me in Australia they will cable to London and London will notify me immediately.

Q. About what proportion does your business reach annually?

A. In the last few years it hasn't been so good. Gem cutters in this country haven't been able to purchase for cash, and the majority have been going bankrupt so much

You cannot be selling without getting cash. In Germany, almost the same thing prevails. Of course, the market is in Switzerland and France today. That has been conducted from England.

Q. If you have no objection for any personal reason, I would like to know about what proportion of your business—how much you do in a year.

A. The last few years there has been very little in rough sapphires. There is a movement now from Europe, and the industrial sapphires I may be able to dispose of will run 20,000 to 25,000 ounces.

Q. You handle other things than sapphires?

A. Sapphires, opals, zircons, emeralds. The lapidaries in this country have gone back the last five years considerably. There is hardly a lapidary in this country with 12 men cutting, whereas in 1928 there were factories with 150 or 200 all over the country.

Q. By the Court: You are not confining yourself to sapphires?

A. All classes of gems.

Q. But the principal use of sapphires now is industrial?

A. There is a very, very large industrial use for sapphires, yes.

Q. They are used, however, for gems—ornaments?

A. Yes. They are about the third most popular stone today.

Q. Are you familiar with what is termed today as costume jewelry?

A. Yes.

Q. What has been the effect of that?

A. That is what ruined the business.

Q. When did that start?

A. That started in 1926, in New York, and it spread right across the country. Shore & Company were the first people to start it in New York, and they opened about 20 or 30 stores, and the Hiller people started, and they introduced it to the department stores, and the ladies caught onto it.

Q. That depressed the market on all kinds of semi-precious stones?

A. Yes.

Q. Including diamonds?

A. Yes; including diamonds. Going back to diamonds, in 1928 you had to pay $250 a carat, and you can buy the same for $125 today quite readily.

The Court: That is all.

Q. By Mr. Meyberg: Mr. Heiser, you carry today a stock of cut sapphires and emeralds, do you, for sale?

A. Yes.

Q. Do you carry them with you right here?

A. I have a few here, yes.

Q. What is the value of that stuff?

Mr. Peterson: I object to that upon the ground that it has no bearing upon the issues in this case; it has nothing to do with the matter we are concerned with here.

The Court: Overruled.

Mr. Peterson: Note an exception.

A. About $70,000.

Q. By Mr. Meyberg: $70,000?

A. Yes. That is what I have in America now.

Q. Do you have some of those gems, cut, with you here in the courtroom?

A. Yes; in back yonder.

Mr. Meyberg: Would the court like to see some of his present stock?

The Court: No; I don't care to see that at all.

Mr. Meyberg: I offer, may it please the court, a circular obtained from the Library of Los Angeles, marked: Information Circular, Department of Commerce, Bureau of Mines, put out by the United States Government. I would like to read in evidence from it, in referring to a question or two to the witness, on the subject of the court's interrogation—just a few lines from it.

Mr. Peterson: Let him make his offer.

Mr. Meyberg: I am now making the offer of this Department of Commerce, Bureau of Mines, United States Government circular.

Mr. Peterson: You are offering the circular in evidence?

Mr. Meyberg: I would like to read from it, and you may be permitted to read from it if you wish, into the record.

Mr. Peterson: I am going to object to the offer in evidence of this document. It purports to be a mimeographed circular; not even original typing; not signed by anybody; no showing that the man that I represent ever knew of its existence. It has no probative value here at all. Counsel merely is bringing a document here without any identification whatever. You can't bind the defendant or plaintiff, or anyone else, with that sort of evidence. I am objecting to it upon the ground that no foundation has been laid for it, and that it is hearsay.

The Court: This purports to be at least a circular issued by the United States what—

Mr. Meyberg: Department of Commerce, Bureau of Mines, information circular.

The Court: It is a public document?

Mr. Meyberg: It is a public document, your Honor.

The Court: Such are admissible in evidence, I believe.

Mr. Peterson: I don't think that you can bring in a mimeographed circular of any kind, even if it is put out by the President, without showing that the parties to the case knew something about it.

The Court: It is like a weather-report; if it is authentic it is admissible. That will be my ruling.

Mr. Meyberg: This is information which the government issues, and so far as my information is concerned from the Library—I would call attention to the fact that Mr. Zimmer, one of their witnesses, stated from the witness stand that he received this from the government; I read from it, and he identified the reading; said he was familiar with it.

The Court: I remember you reading from some document.

Mr. Meyberg: This was the circular.

The Court: Is it your information that is the only form in which it is issued?

Mr. Meyberg: That is the only form in which it is issued. It is marked IC6471, August, 1931. It comes from the records of the Public Library.

Mr. Peterson: My position is not that it is not a document put out by the government. My objection is, so far as the persons I represent are concerned, so far as the issues in this case are concerned, it is hearsay and not competent.

The Court: That is true, in a way. At the same time, suppose we were here trying the question of the value of wheat, for instance, wouldn't a circular issued by the Department of Agriculture, for whatever relation it might have to the question, be admissible? I rather think so. The objection will be overruled. Let it be admitted.

Mr. Peterson: Are you offering the whole thing?

Mr. Meyberg: May I suggest that you may read any portion into the record you wish. I will read whatever I wish. It will be very short.

The Court: It may be placed in evidence, of course. It is only the material part, naturally, that you want to refer to.

Mr. Meyberg: I would like to withdraw it and return it to the public library, if I may, after I read what I wish and after you have read whatever portion you care to into the record.

Mr. Peterson: I can assure you I am not going to read any of it, but I would like to have an exception shown to his Honor's ruling.

The Clerk: Plaintiff's Exhibit No. 8.

The Court: I don't care for any reading.

Mr. Meyberg: I should like to ask the witness a question

in reference to it. Mr. Heiser, referring to Plaintiff's Exhibit No. 8, and particularly to paragraph 9 of circular IC6471, it refers to New South Wales. In 1927, the Heiser Burma Sapphires (Ltd.) started operating a dredge on sapphire ground near Inverell, in New South Wales, treating the dirt in sluice boxes. Its operation proved so successful that the company began operating its own cutting plant and developing a sapphire cutting machine. Sapphires totaling 3118 ounces in weight were produced in New South Wales in 1927. Was that your company?

A. Yes, sir.

Q. Are you the Heiser—

The Court: Mr. Meyberg, I wouldn't believe that the document is evidence of what this plaintiff did in New South Wales. This document is evidence of market conditions, or such things as the government of the United States has within its jurisdiction, but I wouldn't regard it for that. It is not admitted for any such purpose as that, to show how good a man this plaintiff is, or the proportion of his business in New South Wales. Manifestly, it would be the rankest kind of hearsay evidence of a fact like that, would it not?

Mr. Meyberg: Your Honor, it is a report of the United States government on various mining operations throughout the world, pertaining to sapphires, and has prices in it also.

The Court: What I noticed about it, and the reason why I admitted it was because it discussed production in general, and in the sapphire market.

Mr. Meyberg: Yes, particularly in this field.

The Court: But as proof of a company Mr. Heiser is associated with, whether they were successful or not, I think that is going a little too strong, or too far. I don't accept it as evidence of anything of that sort, manifestly.

Q. By Mr. Meyberg: Mr. Heiser, to clear up the question of the bankruptcy action, the bankruptcy action which has been referred to here was the Golden State Gem Company of California, was it not?

A. Yes, sir.

Q. That was not a company in which you were interested?

A. No, sir.

Mr. Meyberg: No further questions, your Honor.

Q. By Mr. Peterson: If I understood your testimony correctly, you stated that the jewelry business has been ruined by the costume jewelry business, is that right?

A. Yes, sir.

Q. That ruination of the jewelry industry commenced, I think you said, in 1926?

A. I said it was introduced in 1926.

Q. It commenced then?

A. Yes, sir.

Q. And then it progressed?

A. Yes.

Q. I think you also stated that industrial sapphires, such as are described in your complaint, have very important uses in time of war?

A. Yes, sir.

Q. Now, the industrial sapphires described in your complaint were at least brought into this country, in 1915?

A. Yes.

Q. Did you sell any of those to the European countries for use in time of war?

A. No; I shipped from Australia and London direct.

Q. Did you yourself make any sales to these warring countries of this industrial sapphire?

A. From this particular parcel?

Q. Yes.

A. No, sir.

Mr. Peterson: That is all.

Q. By Mr. Meyberg: Did you from any other parcel?

A. Yes.

Q. In what quantities?

A. 1800 ounces, 5000 ounces, 15,000 ounces.

Q. Where did you make the shipments?

A. Some to New York. Mr. Jankower I shipped to.

Q. Any foreign countries?

A. Germany and Switzerland.

Q. Any others?

A. Berne, the Swiss French border, Paris, London; practically all the countries that consumed them.

Q. Were these stones mined by you, Mr. Heiser?

A. Yes, sir.

Q. The subject of this action?

A. Yes.

Q. In Australia?

A. Yes.

Q. I show you Plaintiff's Exhibit No. 2 for identification—by the way, you have seen stones like that?

A. Yes.

Mr. Meyberg: May this be marked, this package of small sapphire material, be marked Plaintiff's Exhibit 2-B for identification?

The Clerk: 2-B for identification.

Q. By Mr. Meyberg: I direct your attention, Mr. Heiser, to Exhibits 2 and 2-B for identification. What are those?

A. Blue sapphires.

Q. With reference to the 1200 ounces of blue sapphires, that are part of the subject matter of this action, are those a representative lot of what those sapphires consist of?

A. Yes.

(Whereupon an adjournment was taken until Wednesday, June 28, 1939, at 10:00 o'clock a. m.)

Los Angeles, California, Wednesday, June 28, 1939, 10:00 A. M.

Mr. Meyberg: Mr. Peterson, I would like to have Mr. Woodruff go on the stand for a few questions. I notice he is not in court. Will you have him in court?

Mr. Peterson: I understand he is transacting some business, and I couldn't get him here this morning.

Mr. Meyberg: Can you have him here this afternoon?

Mr. Peterson: I don't know. Mrs. Woodruff tells me that she is not certain, but if you had let me know yesterday—

Mr. Meyberg: I did not notice that he was not in court yesterday. He had been in court while we started out defense.

The Court: What are you talking about?

Mr. Peterson: He is talking about putting Mr. Woodruff on, who is not here this morning. I told him if I had known he had wanted him to be used as a witness I would have had him here.

Mr. Meyberg: He had been in attendance here when we opened our defense. My attention was just called to the fact that he was not here, and I want to use him as a witness and ask him a few questions, and I want Mr. Peterson to have him come in.

Mr. Beveridge: Maybe we might stipulate to what he might say.

The Court: The gentleman referred to, Mr. Woodruff, was absent yesterday?

Mr. Meyberg: Yes. My attention was called to the fact that he was absent yesterday.

The Court: If you were an active young man you would have had a subpoena issued.

Mr. Meyberg: My attention was just called to it.

The Court: There is nothing before the court. Finish the cross examination of this witness.

Mr. Meyberg: Will you mark this?

The Clerk: This will be marked Plaintiff's Exhibit 2-C for identification.

Mr. Meyberg: It purports to be a small blue sapphire in the rough.

Mr. Peterson: What is that exhibit?

Mr. Meyberg: 2-C.

MAURICE EMANUEL HEISER recalled.

Redirect Examination.

Q. By Mr. Meyberg: Mr. Heiser, I direct your attention to Exhibit 2-C. Will you tell me what that is?

A. Blue sapphires.

Q. That's in the rough?

A. Yes, in the rough.

Q. I direct your attention to Plaintiff's Exhibits 2-A, -B and -C. What are those stones?

A. All blue sapphires.

Q. Australian?

A. Yes, sir.

Q. In the rough?

A. Yes, sir.

Q. How do those three samples compare with the 1200 ounces of sapphires that are described in the complaint?

A. They compare practically the same, sir.

Q. The 1200 ounces of blue sapphires that are referred to in the complaint, would you say that that is a fair sample of what they represent?

A. Yes; with the exception that there were a few larger blues in the other package.

Q. Would they be all together in that package, or be divided?

A. They would be mixed; some bags have large or small; some bags small sizes; others medium.

Q. But the 1200 ounces would be mixed stones of the same general character as these three?

A. Yes, sir.

Mr. Meyberg: Mark this next in order for identification.

The Clerk: This will be Plaintiff's Exhibit No. 2-D for identification.

Mr. Meyberg: 2-D consists of three separate stones.

Q. I show you Plaintiff's Exhibit 2-D, Mr. Heiser. State what that is.

A. Those are sapphires also.

Q. What kind of sapphires; what are they?

A. Australian sapphires. There are two rough; one cut.

One was cut by Mr. Zimmer. We had this half cut off, and this was a stone from the other end.

Q. Is that a fair example—or how would it compare with the 1200 ounces of blue sapphire referred to in the complaint?

A. Some are quite a lot larger than that.

Q. The same general class?

A. Yes.

Q. One of these is cut?

A. Yes; that is the one that is cut.

Q. And the piece that was cut was cut off of the large piece?

A. Yes.

Q. This piece being sawed in half, and this piece being cut out of the other half, is that correct?

A. Yes, sir.

Mr. Meyberg: Would your Honor like to see that? One is the cut stone, cut out of half of the same stone.

The Court: This is the uncut half?

Mr. Meyberg: That is correct, your Honor. The other half of the same stone that is cut. We will offer in evidence, may it please the court, Plaintiff's Exhibit 2, now marked for identification, A. B. C and D.

The Court: Let them be admitted.

Q. By Mr. Meyberg: Now, referring to Plaintiff's Exhibit No. 3 for identification, Mr. Heiser, what are those?

A. Rough Australian zircons.

Q. By the Court: What did you say they were?

A. Rough Australian zircons, Your Worship.

Q. By Mr. Meyberg: How does that compare with the zircon that is referred to in the complaint?

A. Very much the same, only there were some larger crystalline stones.

Q. And some smaller?

A. Yes. We have some very small ones here. They wouldn't be very much smaller than these.

Q. But generally that same type of material?

A. The same type of material.

Mr. Meyberg: We offer Plaintiff's Exhibit 3 for identification in evidence, your Honor, as Plaintiff's Exhibit 3.

The Court: Very well; let it be admitted.

Q. By Mr. Meyberg: I show you Plaintiff's Exhibit No. 4 for identification. What is that?

A. An Australian cut sapphire.

Q. Was that cut from the same general type of material as Plaintiff's Exhibit No. 2?

A. Yes, sir.

Q. Was that the same general type of material as referred to in the complaint, of the 1200 ounces of sapphires?

A. Yes.

Mr. Meyberg: We offer that in evidence as Plaintiff's Exhibit No. 4.

Mr. Peterson: Just a minute before you receive that. I would like to ask him a question.

Mr. Meyberg: No objection.

Q. By Mr. Peterson: This stone that you have here, it is marked Plaintiff's Exhibit No. 4 for identification. Did you cut that yourself?

A. No, sir.

Q. Did you see it cut?

A. I think I did.

Q. Not what you think. Do you know if you did?

A. Yes; I am sure I did.

Q. Where was it cut?

A. It was cut at my own place in San Francisco.

Q. Where?

A. San Francisco.

Q. When?

A. About ten months ago, a little over ten months ago.

Q. Who cut it?

A. I cut the stone, and one of my friends polished it.

Q. I asked you the direct question: Did you cut that stone yourself?

A. Cutting is one thing, and polishing is another. Do you mean polishing or cutting?

The Court: Who cut the stone?

A. I cut the stone.

The Court: You were asked the direct question: Did you cut that stone yourself, yes or no?

A. I cut the stone, yes. I didn't polish it, though.

Q. By Mr. Peterson: You cut it?

A. Yes.

Q. From what did you cut it?

A. From a piece of rough Australian sapphire like this.

Q. You cut it ten months ago?

A. About ten months ago.

Q. Where was the rough Australian sapphire up to the time that you cut this stone in San Francisco ten months ago?

A. Where was it?

Q. Yes.

Mr. Meyberg: Do you mean the rough sapphire from which he cut that?

Mr. Peterson: That's right.

A. It was in San Francisco.

Mr. Peterson: Where?

A. It was in San Francisco.

Q. Where in San Francisco, Mr. Witness?

A. It was in one of the banks. What time do you mean in San Francisco? At any particular time?

Q. At the time you took the stone and either cut it or had it cut, where was the stone from which this exhibit was cut?

A. In San Francisco.

Q. It was under your custody and control?

A. That's right. I had merchandise up in Seattle, the end of last year, and I had some in Canada the early part of last year.

Q. It wasn't then any of the material that has been in storage down here on San Pedro Street?

A. No, sir.

Mr. Peterson: That is all I wanted to know.

Mr. Meyberg: We will stipulate it was not.

Mr. Peterson: He said it was not.

Mr. Meyberg: Mr. Peterson, we selected some material down at the warehouse the other day in agreement with Mr. Beveridge that it was to come up here, and I was to have Mr. Joseph down there yesterday morning at 9:30 to pick it up, with Mr. Woodruff, Jr. Mr. Joseph was down there and said Mr. Woodruff phoned that he would not allow it to come in. We had agreed to have it sent here by the warehouse, and Mr. Woodruff said he couldn't do that. Mr. Beveridge agreed he would see that he was there, or there was a release to come up here at 9:30 tomorrow morning. Is that correct, Mr. Beveridge, substantially?

Mr. Beveridge: I assumed, Mr. Meyberg, that you had abandoned the idea of using the samples. The entire day passed without your mentioning it again. If you want these samples they are there to have. All you have to do is to ask for them. They are there waiting for you, or your representative and a representative of the plaintiff can go down and get them. The only thing was we just wanted both sides to be there to see they were given the samples.

Mr. Peterson: We want to have Miss Bowman, at the Colvear warehouse send them up direct. Are you willing to do that now?

Mr. Beveridge: She thought that you had abandoned the idea.

Mr. Meyberg: Will you see that Mr. Woodruff gives an order?

Mr. Peterson: Of course, we will give an order.

Mr. Beveridge: We would rather have a court order.

Mr. Meyberg: If you say it is satisfactory, Mr. Peterson, you will see that it is done?

Mr. Peterson: Surely. We will have them up here. I will see that the warehouse releases them for you.

Mr. Meyberg: If you will send them up here I will pay for it.

The Court: Is there any further examination of this witness?

Mr. Meyberg: That is all.

The Court: Any cross examination?

Cross Examination.

Q. By Mr. Peterson: Just one question: The stones we were talking about, Mr. Meyberg and I, were some samples you picked out a day or two ago, is that right?

A. Yes.

Q. Those are the ones down at the storage place?

A. Yes, sir.

Mr. Peterson: I haven't any questions.

The Court: Mr. Meyberg, please explain, so that I will get it clear in my mind, what your colloquy was, which arose a few minutes ago.

Mr. Meyberg: We went down to the warehouse, at Mr. Peterson's invitation, day before yesterday afternoon, and we selected some samples of what was down there, and put them in an envelope.

The Court: Do you mean of the mechanical industrial rough sapphire?

Mr. Meyberg: Correct. We selected those samples to be brought into court. It was agreed with Mr. Beveridge and with Mr. Joseph, from my office—I was also there—that Mr. Joseph would come there at 9:30 tomorrow morning, and Mr. Woodruff, Jr., would be there, and they would release the envelopes of this material, and they would be brought into court. The warehouse actually required Mr. Woodruff's signature or authority before they would be released, and Mr. Woodruff said he couldn't release it at that time because he had to get authority from his father. Mr. Beveridge said he would see that it was done yesterday morning at 9:30. Mr. Joseph was at the warehouse, waiting and he was told that Mr. Woodruff would not release the stuff.

The Court: Just tell me what was said.

Mr. Meyberg: That they couldn't release the stuff.

The Court: Do you want it brought here?

Mr. Meyberg: Surely; we would like to have it brought here.

The Court: Are you asking that it be brought here now?

Mr. Meyberg: I am, your Honor.

Mr. Peterson: It will take half an hour to get it.

The Court: Very well. Take steps immediately to get it.

Mr. Peterson: A half an hour will be ample. I will have somebody go down with Mr. Woodruff.

Mr. Meyberg: I have no objection to his going down alone, if Mr. Woodruff will state that he will bring the envelopes intact. We will pay the charges.

Objectors' Exhibit RR-2.

State of California
Department of Investment
Division of Corporations

In the matter of the investigation and investigation of International Gems.

At a hearing held in the above entitled matter in the offices of the Division of Corporations, Los Angeles, California, on Tuesday, July 20, 1937, at 10 A. M., before Thomas J. Kelley, Assistant Commissioner.

Reported by Clare E. Cone.

• • • • •

Department's Exhibit No. 1.

Harry A. Goldman
Lawyer
Suite 1215 Stock Exchange Building
639 South Spring Street
Los Angeles
TUcker 1141

(Stamp)
Received
State Corporation
Department
Jun 23 1937
Los Angeles Office

Commissioner of
Corporations
State Building
Los Angeles, Calif.

June 22, 1937.

In re: Application of International Gems. Your Receipt Number 23000.

Sir: With reference to the Schedule of Proposed Operations, Exhibit "F" of the Application in this matter, this Schedule sets forth the operations for the six month period, but is not to be construed as inferring that the money shown as expenditures in said schedule is necessary before said operations can be commenced.

No money is necessary to commence operations for the reason that the gems to be turned over to the Corporation are of sufficient value and are of such ready sale in their present state that operations can be commenced immediately without the addition of any new capital; further, by reason of the fact that there is to be transferred to the corporation the factory now operated by Ted Zimmer, which is complete in itself, and which will afford the Company all of the necessary equipment to cut the rough gems.

Mr. Heiser's business in the past and at the present time has been merely in the sale of rough and finished gems of the same character as those presently to be transferred to the Corporation, and, therefore, by merely continuing his present operations, he will afford the Company sufficient assets to commence operations. The new financing will merely be used for the purpose of enlarging the scope of operations.

The maximum salary proposed to be paid out to any officer or employee of the Corporation will not exceed $100.00 per week until such time as the corporation is on a dividend paying basis.

Mr. Heiser has handed me a resume of his lifetime operations, and also the background of Ted Zimmer, which I am enclosing herewith as Exhibit "A" hereof.

May this letter and the exhibit be considered as an Amendment to the application heretofore filed in this matter.

Respectfully yours,

H. A. GOLDMAN.

HAG:BC

Exhibit A.

History of M. E. Heiser.

Born in London, 1888. Mother, Irish and English. Father, English.

Taken to Australia when five months old, arrived there at nine months old. Educated in Australia and England. Instructed in mining by *Profession* Robert Taylor.

At 16½ years of age discovered the gold fields of the Dee River, Queensland, Australia. In 1904 crossed to London, to study business in connection with gems, cutting, selling and crystallography. Then returned to Australia.

In 1913-1914, controlled the Queensland opals and represented the Government of that state at the Panama Pacific International Exposition, San Francisco, California. In 1915, as their gem and gold representative.

Stayed in America 1916-17-18, controlling Australian Sapphires, opals, emeralds and zircons on the U. S. A. markets.

In 1919 introduced into the School of Designs, Providence, R. I., the new method of opal cutting, which is my creation. This can be had in a book entitled "Jewelry and Designs by Rose and Cerani, Compiled in the School of Designs"—front pages mention reference of thanks to M. E. Heiser.

In 1919-20, discovered the new Burmah Sapphire Mine

and controlled that deposit; constructed dams across the Frazier's River, for conservation of water, in that district. I developed the mines and during this period completed and patented the only known method to save sapphires, rubies, zircons, emeralds and diamonds by a dredging process.

Returned to America to supply the demands in 1921. Contracted with the Big 4 in New York City to supply them all the gems that I could mine or procure for five years, and controlled a quarter interest of the voting stock of the Sapphire Mining & Cutting Corporation, 565 Fifth Avenue, New York, then returned to Australia.

In 1924 completed the Lobree Gem Cutting Machine, which enables inexperienced people to cut gems successfully in three months, and at one-fourth the present price. The old method takes 5 to 7 years to learn to cut, and is all by hand and judgment.

In 1928, tried to introduce into America the Lobree Gem Cutting Machine for the purpose of cutting gems in America in competition to Germany, Holland and Belgium.

In 1929, the introduction of the Lobree Machine was introduced into London by Mr. Heiser, and the gradual development of the machine and thought that the gem cutting should be done in England and the U. S. A., in competition to the foreign countries.

In 1930, discovered gold in Ireland, and emeralds. Prospected over the greater part of Ireland, which ultimately resulted in the Crown granting two leases over an area a *littmoe* more than 703 square miles.

In 1933, returned to California and joined up with Mr. R. W. Hanna of the Standard Oil. I formed the Engineering Gold Mining Guild of that State, and made a complete survey of the gold-bearing areas, and had an option from the largest land owners in the State, of potential mining property of 700,000 acres, with approximate gold content of $300,000,000. This area was completely surveyed, mapped and checker-boarded, and is all lying dormant on account of the financial crisis of that year.

Returned to Ireland on account of the financial crisis in this country, in 1935.

In 1936-37, in England, and completed the Heiser-Seadrome. This will enable Los Angeles to become the airport of the Pacific World, as it will be instrumental in allowing the China Clipper class of airships to fly the Pacific, and re-fuel half way across, thereby carrying a successful pay load.

Mr. Ted Zimmer, 8th Floor, Jewelry Trades Building, 220 W. 5th St., Los Angeles, was born in Colorado in 1904. His father and uncle have been in this country for over 40 years, the majority of that time they have been cutting gems in this State. Mr. Petrie, the uncle of Mr. Zimmer, died in 1935, and Mr. Ted Zimmer purchased his gem cutting business. Mr. Ted Zimmer has been in the gem cutting business for 19 years, practically all of his working life. He is well known in the trade, and he enjoys the confidence of the leading jewelers in the State. Mr. Zimmer has done a considerable amount of successful Turquoise mining, cutting and marketing of that gem, besides all other classes of gem cutting and dealing in this State, and is one of the leading expert cutters in the United States. His knowledge of crystallography is equal to anyone in the State.

Mr. Heiser gives as references the following:

J. W. Campbell, President of the Credit Clearance House Number 1 Vanderbilt Avenue, New York, N. Y.

Ira Clarke, Lieutenant Governor Federal Reserve Bank, San Francisco, Calif.

Georges Hollis, President Typographical Union, San Francisco, Calif.

Ralph Arnold, Geologist, 8th Floor Subway Terminal Bldg., Los Angeles, California.

L. J. Meyberg, Attorney, 403 Lane Mortgage Bldg., Los Angeles, California.

F. F. G. Hopper & Company, Custom Brokers, U. S. Customs, San Francisco, California.

Mr. Evans, Chief Appraiser, U. S. Gem Department, U. S. Customs, San Francisco, California.

Incidentally, the last two named gentlemen have handled and appraised Mr. Heiser's gems for approximately twenty years past.

Objectors' Exhibit SS.

Office of
Malcolm McEachin
Secretary of State

The State of Nevada
Department of State

I, Malcolm McEachin, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that the annexed is a true, full and correct transcript of the original Articles of Incorporation of Golden State Gem Company of Nevada as the same appears on file and of record in this office.

In Witness Whereof, I have hereunto set my hand and affixed the Great Seal of State, at my office in Carson City, Nevada, this 13th day of December, A. D. 1940.

MALCOLM McEACHIN,
Secretary of State.
(Seal) By MURIEL CULLIFIELD, Deputy.

Articles of Incorporation of Golden State Gem Company of Nevada.

Know All Men by These Presents: That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under and by virtue of the General Corporation Law of the State of Nevada, and all acts amendatory thereof or additional thereto, and we hereby certify:

First: That the name of this corporation shall be Golden State Gem Company of Nevada.

Second: That the place where its principal office is to be located is in Carson Valley Bank Building, in the City of Carson City, County of Ormsby, State of Nevada, and the resident agent therein, and in charge thereof, is United States Corporation Company, but this corporation may maintain an office in such other place or places as may be from time to time fixed by its board of directors, or as may be fixed by the By-Laws of said corporation.

Third: That the objects and purposes for which said corporation is formed, and the nature of the business proposed to be transacted, promoted or carried on by said corporation are:

To search for, prospect and explore for precious and semi-precious stones, ores and minerals and to locate mining claims, grounds or lodes in the United States of America or the territories thereof or in foreign countries, and record the same pursuant to the mining laws of the said United States or other countries; to placer mine, bore, drill, prospect and mine for precious and semi-precious stones, gold, silver, copper, lead, zinc, iron, antimony, tin, asbestos, and all kinds of ores, metals, minerals, and precious and semi-precious stones, oils, gas and coal, and to mill, convert, prepare for market and otherwise produce and deal in the same and in the products and by-products thereof; to purchase or otherwise acquire, own, exchange, sell or otherwise dispose of, mortgage, hypothecate and deal in minerals and mineral lands of all kinds, oil, coal, and timber lands, personal estate, water and water rights, and to work, explore, operate and develop the same, and carry on the business of mining in all its branches; to carry on the business of searching for, prospecting, preparing, procuring, refining, piping, storing, transporting, supplying, buying, selling, manufacturing and distributing petroleum and other oils and their products or by-products; to construct, build, operate and maintain, oil wells, refineries, buildings, works, workshops, laboratories, machinery, power plants, saw mills, store and warehouses; to acquire by grant, purchase, or otherwise, any property or privileges from any government,

or from any authority, individual, municipal or otherwise, and to perform and fulfill the conditions thereof;

To construct, purchase or otherwise acquire, maintain, and operate pipe lines, tunnels, sluices, reservoirs, and ditches for mining, irrigation and transportation purposes. Also to purchase, lease, or otherwise acquire lands, mills, mill sites, tunnel sites, buildings, machinery, power houses, pumping plants, pump machinery, dump rights, ditch rights, flumes, pipes, pipe lines, private railways, private tramways, private roads, easements, franchises, and licenses. For its own use to purchase, construct, lease, or otherwise acquire, operate, and maintain electric lighting and power plants, buildings, machinery, appliances, and equipments appertaining thereto; to purchase, construct, lease, or otherwise acquire, operate, and maintain telegraph and telephone lines for the transmission of messages and sound by electricity; to furnish gas, water, electricity, power, heat, and light for mining, milling, agricultural, domestic, and other uses and purposes. To purchase, lease, or otherwise acquire, construct, and maintain plants for the purpose of extracting values from refractory ores. To purchase, treat, refine, extract, reduce, crush, calcine, smelt, concentrate, and manipulate all kinds of ores, minerals, and metalliferous substances with a view to obtaining therefrom gold, silver, tin, lead, copper, iron, and other metals, combination of metals, or other valuable substances with a view to preparing the same for market. Generally to engage in smelting, reducing, crushing, refining, milling, treating, assaying, and selling minerals and ores of all kinds, classes, and descriptions. To buy, sell, manufacture, and generally deal in machinery, blasting powder, and high explosives of every description, fuses, caps, implements, candles, and conveniences suitable for use in connection with mining and metallurgical operations. To purchase, lease, or otherwise acquire lands for the purpose of erecting thereon office buildings, plants, workshops, dwelling houses, warehouses, stores, hotels, and other buildings in connection with the foregoing purposes.

To hire, lease, purchase, locate, acquire, own, hold, exploit, develop, work, mine, sell, convey, let, mortgage, trans-

fer, or otherwise dispose of oil, coal and natural gas producing lands and mining properties, oil and natural gas wells, coal mines, mining claims, quarries, oil, gas and coal lands, and all kinds of real and personal property and all kinds of interests, easements, rights and privileges in connection therewith or appurtenant *there*-thereto and all kinds of rights and franchises, ditches, pipe lines, flumes, chutes, reservoirs, water works and electric plants.

To placer mine, mine, quarry and prepare for market precious and semi-precious and other stones and minerals and to manufacture the same into various products thereof and to transport and sell the same in crude and or in manufactured form and in connection therewith to generally carry on in all the respective branches thereof, the business of gem cutters, purveyors, manufacturers, merchants, distributors and or agents.

To carry on generally the business of jewelers, gold and silversmiths, dealers in precious stones, bullion, coins, medals, china, curiosities, gold and silver plate, plated articles, optical and scientific instruments of all kinds and all kinds and character of jewelry for personal wear or adornment and in connection therewith to acquire and dispose of in any lawful manner all such store buildings, structures of all kinds, machinery and equipment necessary or incidental thereto as may be deemed necessary.

To buy, sell, deal in, hold, or improve in any manner whatsoever, real estate and the fixtures and personal property incidental thereto or connected therewith; to purchase, lease, hold, manage, sell, mortgage, pledge and in any way acquire or dispose of real or personal property; and to carry on in all their respective branches the business of real estate dealers, builders, contractors, and dealers in building materials or requisites; and to do any and everything necessary or incidental to the accomplishment of any of these objects;

To manufacture, purchase, or otherwise acquire, sown, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with, goods, wares and merchandise and real and personal property of every class and description;

To acquire, and pay for in cash, stock or bonds of this corporation or otherwise, the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association or corporation;

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trade-marks and trade names, relating to or useful in connection with any business of this corporation;

To guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations organized under the laws of this state or any other state, country, nation or government, and while the owner thereof to exercise all the rights, powers and privileges of ownership;

To issue bonds, debentures, or obligations of this corporation from time to time, for any of the objects or purposes of the corporation, and to secure the same by mortgage, pledge, deed of trust, or otherwise;

To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital; and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly;

To have one or more offices, to carry on all or any of its operations and business and without restrictions or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey, or otherwise dispose of real and personal property of every class and description in any of the States, Districts, Territories or Colonies of the United States, and in any and all foreign countries, subject to the laws of such State, District, Territory, Colony or Country.

In general, to carry on any other business in connection with the foregoing, whether manufacturing or otherwise, and to have and exercise all the powers conferred by the laws of Nevada upon corporations formed under the act hereinbefore referred to, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation.

Fourth. The total authorized capital stock of this corporation is Five Hundred Thousand (500,000) shares all of which shall be without nominal or par value. Of said capital stock One Hundred and Fifty Thousand (150,000) shares shall be preferred stock and Three Hundred and Fifty Thousand (350,000) shares shall be common stock.

The preferred stock shall entitle the holders thereof to receive from the surplus or net profits of the corporation, when and as declared by the Board of Directors, cumulative dividends at the rate of eighty cents (80c) per share per annum, payable on such dates during the months of January and July of each year after issuance as determined by the Board of Directors and before any dividends shall be paid or applied to the common stock.

In the event of the dissolution, liquidation or winding up of the corporation (whether voluntary or involuntary) the preferred stock shall entitle the holders thereof to receive the sum of Ten Dollars ($10.00) per share together with all dividends accumulated and unpaid thereon before any assets shall be applied to the common stock but shall not thereafter participate in the assets of the corporation.

The preferred stock shall be subject to redemption in whole or in part at any time after five (5) years from the date of issuance thereof until ten (10) years from the date of issuance thereof upon payment to the holders thereof of the sum of Ten Dollars and Fifty Cents ($10.50) per share together with all dividends accumulated and unpaid thereon.

After ten (10) years from the date of issue all preferred stock then issued and outstanding and unredeemed must be redeemed by the corporation by payment to the holders thereof of the sum of Ten Dollars ($10.00) per share together with all dividends accumulated and unpaid thereon. The directors shall have power to create and provide for such fund or funds as in their discretion shall be found necessary to provide for the redemption of the preferred stock as herein specified. The time and manner of redemption shall be as from time to time determined by the Board of Directors.

The preferred stock shall not be entitled to vote upon any questions affecting the management or affairs of the corporation nor shall the holders thereof be entitled to notice of stockholders' meetings except as otherwise provided by law, the exclusive voting right to be vested in the common stock; provided, however, that in the event the corporation shall fail to pay or declare dividends at the dividend rate upon the preferred stock and such delinquency shall continue for a period of eighteen (18) months, then and in that event, the preferred stock in respect to which such delinquency occurs shall be entitled to the same voting rights as attach to the common stock and shall also be entitled to notice of stockholders' meetings. Upon payment, however, to the preferred stock of all dividends accumulated and unpaid thereon, or the setting aside of the funds for the payment thereof, the voting rights of the preferred stock shall again cease and so on from time to time as such delinquencies may occur or be terminated.

Both preferred and common stock without nominal or par value may be issued by the corporation from time to time for such consideration as shall from time to time be determined by the Board of Directors.

Fifth: That the amount of capital with which this corporation will commence business is Five Hundred Dollars ($500.00).

That the names and addresses of each of the original subscribers to the capital stock and the amount subscribed for by each are as follows:

Names—Address	No. of Shares
Frank S. Cliff, Carson City, Nevada	3
F. E. Meder, Carson City, Nevada	1
L. H. Peters, Carson City, Nevada	1

Sixth: That the period of the existence of said corporation shall be unlimited.

Seventh: That the members of the governing board of said corporation shall be styled directors, and the number of said directors shall be seven (7).

The names and post office address of the first board of directors are as follows:

Names	Address
Wm. Muller	Carson City, Nevada
Henry P. Karge	Carson City, Nevada
Fred L. Kolster	Carson City, Nevada
Damon H. Carr	Carson City, Nevada
August A. Glanzman	Carson City, Nevada
H. C. Sproule	Carson City, Nevada
W. E. Baldy	Carson City, Nevada

Eighth: That the capital stock of the corporation shall not be subject to assessment.

That the private property of the stockholders, directors and officers shall not be subject to the payment of corporate debts to any extent whatever.

Ninth: In *futherance* and not in limitation of the powers conferred by statute, the board of directors are expressly authorized:

To hold their meetings, to have one or more offices, and to keep the books of the Company, except as may be otherwise specifically provided by the laws of the State of Nevada, within or without the State of Nevada, at such places as may be from time to time designated by them.

To determine from time to time whether, and if allowed, under what conditions and regulations the accounts and books of the company (other than the books required by law to be kept at the principal office of the corporation in

Nevada) or any of them shall be open to the inspection of the stockholders, and the stockholders' rights in this respect are and shall be restricted or limited accordingly.

To make, alter, amend and rescind the by-laws of the company, to fix the amount to be reserved as working capital, to fix the times for the declaration and payment of dividends, to authorize and cause to be executed mortgages and liens upon the real and personal property of the company, provided always that a majority of the whole board shall concur therein.

With the consent in writing or pursuant to the affirmative vote of the holders of at least sixty per cent (60%) of the stock issued and outstanding, at a stockholders' meeting duly called for that purpose, to sell, assign, transfer or otherwise dispose of the property of the company as an entirety, provided always that a majority of the whole board concurs therein.

In order to promote the interests of the company and to encourage the utilization of the company's lands, and other property, to sell, assign, transfer, lease and in any lawful manner dispose of such portions of said property as the board of directors shall deem advisable, and to use and apply the funds *receive* in payment therefor to the surplus account for the benefit of the company, or the payment of dividends, or otherwise: provided, that a majority of the whole board concur therein, and further provided that the capital stock shall not be decreased except in accordance with the laws of Nevada.

By a resolution passed by a majority vote of the whole board, under suitable provision of the by-laws to designate two or more of their number to constitute an executive committee, which committee shall, for the time being, as provided in said resolution or in the by-laws, have and exercise any or all the powers of the Board of Directors which may be lawfully delegated in the management of the business and affairs of the company, and shall have power to authorize the seal of the company to be affixed to all papers which may require it.

The company may use and apply its surplus earnings or

accumulated profits to the purchase or acquisition of property and to the purchase or acquisition of its own capital stock from time to time to such extent and in such manner and upon such terms as its board of directors shall determine; and neither the property nor the capital stock so purchased and acquired shall be regarded as profits for the purpose or declaration or payment of dividends, unless otherwise determined by a majority of the board of directors.

The corporation reserves the right to amend, alter or repeal any provisions contained in these Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

In Witness Whereof, we have hereunto set our hands and seals this 11th day of August, A.D. 1928.

Signed, sealed and executed in the presence of:

C. H. PETERS.
FRANK S. CLIFF L.S.
F. E. MEDER. L.S.
L. H. PETERS. L.S.

State of Nevada, County of Ormsby, ss.

Be It Remembered, that on this 11th day of August, A.D. 1928, personally appeared before me, a Notary Public in and for the said County and State, Frank S. Cliff, F. E. Meder and L. H. Peters, knows to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

C. H. PETERS,
Notary Public in and for
Ormsby County, Nevada.
(Seal)

Endorsed: Dated August 11th, 1928. Golden State Gem Company of Nevada, Articles of Incorporation.

Filed at the Request of United States Corporation Company August 11, 1928. W. G. Greathouse, Secretary of State. By John W. Brooks, Deputy Secretary of State.

Objector's Exhibit TT.

Paul Peek, Secretary of State.

State of California
(Seal)
Department of State

I, Paul Peek, Secretary of State of the State of California, do hereby certify:

That I have compared the annexed transcript with the record on file in my office, of which it purports to be a copy, and that the same is a full, true and correct copy thereof.

In Witness Whereof, I have hereunto set my hand and affixed the Great Seal of the State of California this 28th day of December, 1940.

PAUL PEEK, Secretary of State.
(Seal) By CHAS. J. HAGERTY, Deputy.

Designation of Representative in the State of California Upon Whom Process Against Golden State Gem Company of Nevada, Incorporated Under the Laws of Nevada, May Be Served.

Know All Men By These Presents:

That Golden State Gem Company of Nevada, a corporation organized and existing under the laws of Nevada, has designated, constituted, and appointed, and by these presents does hereby designate, constitute, and appoint Alfred Barstow, residing in Los Angeles, State of California, its true and lawful attorney upon whom process issued by authority of or under any law of said State of California in any action or proceeding against it may be served; and service of such process on said representative shall constitute a valid and binding service on said corporation.

In Witness Whereof, said corporation has caused its

corporate name to be hereunto subscribed and its corporate seal to be affixed hereto this 25th. day of August, 1928

GOLDEN STATE GEM COMPANY OF NEVADA
(Name of corporation)
By WM. MUELLER, President.
By W. E. BALDY, Secretary.

Corporate Seal

[The Articles of Incorporation of Golden State Gem Company of Nevada, which form a part of this exhibit, appear as Exhibit SS in this record, page 1174.]

Objector's Exhibit UU.

List of Persons holding Shares in the Heiser Burmah Sapphires Limited on the 13th day of November, 1929 and of Persons who held shares therein at any time during the year immediately preceding Nov. 13, 1929 the said date, showing their Names Addresses and Occupations, and on account of the Shares so held.

Folio in Register Ledger containing particulars	Names, Addresses and Occupations				Number of shares held by existing members at date of Return	Account of Shares Particulars of Shares transferred during the preceeding year by persons who have ceased to be members		Remarks
	Surname	Christian Name	Address	Occupation		Number	Date of Registration of transfer	
53	Golden State Gem Co. of Nevada		Los Angeles U.S.A.	Gem Co.	Nil	10,000		Forfeited 5th Sept. 1929

Objectors' Exhibit VV.

Order Fixing Date for Hearing Objection to Claim of M. E. Heiser.

In the District Court of United States for Southern District of California, Central Division.

In Bankruptcy No. 13393-J.

In Matter of Golden State Gem Company, a corporation, Bankrupt.

Hubert F. Laugharn, Trustee herein, having filed his written objections to the claim of M. E. Heiser filed in the above entitled matter in the sum of $30,250.00,

It Is Ordered that April 14th, 1932, at the hour of 10 o'clock A. M. be and the same is hereby fixed for hearing said objections to the claim of M. E. Heiser.

Dated, April 1st, 1932.

EARL E. MOSS,
Referee in Bankruptcy.

Judgment of Dismissal.

In the District Court of the United States, Southern District of California, Central Division.

In the Matter of Golden State Gem Company, a corporation, Bankrupt.

No. 13393 J.

The Petition of M. E. Heiser, alleged creditor of the within estate, to review Referee's order disallowing his claim, heretofore filed herein, having come on for hearing before the Honorable William P. James at 10:00 o'clock A. M., May 16th, 1932, on notice to said alleged creditor, M. E. Heiser, through his attorney, Leonard J. Meyberg, by the Trustee herein, and it appearing to the Court that the order sought to be reviewed by said alleged creditor was made and entered by Referee in Bankruptcy Earl E. Moss, April 26th, 1932, and

It further appearing to the Court that said alleged creditor nor his attorney did not, as required by law and the rules of this Court, cause said Referee in Bankruptcy to certify to the Court a transcript of the proceedings so that the Court may make said review, it is therefore Ordered, Adjudged and Decreed that the petition of the said M. E. Heiser, alleged creditor, to review Referee's order be, and the same is hereby dismissed and the said order of the Referee Earl E. Moss sustaining Trustee's objections to the claim of the said M. E. Heiser be, and the same is hereby affirmed.

Dated this 18th day of May, 1932.

WM. P. JAMES,
U. S. District Court Judge.

Letter.

Law Offices
MacFarland, MacFarland and Beveridge
Suite 1025-26 Board of Trade Bldg.
111 West Seventh Street
Los Angeles, California.
Tucker 9910

February 19, 1930.

Hon. Earl E. Moss
Referee in Bankruptcy
Subway Terminal Bldg.
Los Angeles, Calif.

Re: Golden State Gem Co.

Dear Sir: Enclosing herein for filing proof of debt of M. E. Heiser against the above named bankrupt in the amount of $30,250.00.

Very truly yours,

MACFARLAND, MACFARLAND & BEVERIDGE,
By R. L. BEVERIDGE.

DB:NB. Encl.

Objectors' Exhibit WW.

Certificate in Re Claim of M. E. Heiser.

No. 13-393J.

In the United States District Court in and for the Southern District of California, Central Division.

In the Matter of Golden State Gem Co., Bankrupt.

I Hereby Certify that the records of the above entitled bankrupt proceedings are in the custody of the above entitled court and in my custody as Clerk thereof.

I Further Certify that I have examined carefully the original files of the said case and particularly for the purpose of locating the creditor's claim of M. E. Heiser filed in the above entitled proceedings as noted on the Referee's Docket of Claims in the sum of $30,250.00, and that I am unable to locate the said original claim of said M. E. Heiser in the files of the above entitled proceeding or otherwise or at all, and I am therefore unable to produce the same.

In Witness Whereof, I hereby affix my name and the Seal of the above entitled court.

EDMUND L. SMITH, Clerk,
By E. M. ENSTROMPE,
Deputy Clerk.

(Seal)

Dated at Los Angeles, California, this 10th day of July, 1942.

Objectors' Exhibit YY.

[For identification, not admitted.]

Complaint for Injunctive Relief and to Prevent Multiplicity of Suits.

In the District Court of the United States in and For the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie May Woodruff, et al. Defendants.

To the Honorable Judges of the District Court of the United States In and For the Eastern District of Oklahoma:

Comes now M. E. Heiser, a judgment creditor of the bankrupt herein, Leonard J. Woodruff, and having on file herein a provable claim in the sum of $278,000, and respectfully shows to the court:

I.

That your petitioner is, and at all times herein mentioned was, and has been, a citizen of and a subject of the Kingdom of Great Britain, a resident of the City of London, Kingdom of Great Britain, and a non-citizen of the United States of Amerika; that the defendants Leonard J. Woodruff, Willie May Woodruff, Ida Belle Woodruff, Margueritte Woodruff, Howard Woodruff, and Leonard J. Woodruff, Jr., and each of them, are citizens of the United States of America, and each of them resides now in the State of Oklahoma and in the Eastern District of Oklahoma, at Ardmore, Oklahoma.

II.

That Leonard J. Woodruff was duly adjudicated a bankrupt within the meaning and purview of the National Bankruptcy Act of 1898 and the Amendments thereto by an order duly made by this court on the 5th day of July, 1939. That the administration of said bankruptcy proceedings was referred by an order of general reference made by this court on the 5th day of July, 1939, to the Honorable Geo. F. Clark, as Referee, and is now pending before said Referee, undetermined and unclosed. The said Honorable Geo. F. Clark was at all times herein mentioned, and now is, one of the Referees in Bankruptcy, duly appointed, qualified and act-

ing as such for the Eastern District of Oklahoma. That the amount involved in this instant case is in excess of $3,000.00 exclusive of interest.

III.

That Willie May Woodruff was at all times herein mentioned, and now is, the wife of the bankrupt Leonard J. Woodruff; that Ida Belle Woodruff was at all times herein mentioned, and now is, a single woman, a widow and the mother of said bankrupt; that Margueritte Woodruff, Leonard J. Woodruff, Jr., and Harold Woodruff, and each of them, were at all times herein mentioned, and now are, children of the bankrupt Leonard J. Woodruff; that said Willie May Woodruff, Ida Belle Woodruff, Margueritte Woodruff, Leonard J. Woodruff, Jr., and Harold Woodruff, and each of them, claim to be creditors with provable claims against the estate of the bankrupt Leonard J. Woodruff, and have filed within the time allowed by law, their respective alleged proofs of debt as such alleged creditors; that P. M. Jackson was on or about the 20th day of July, 1939, at a regularly called first meeting of creditors of the bankrupt herein, duly elected as Trustee in Bankruptcy of the Estate of the bankrupt Leonard J. Woodruff, immediately qualified as such and has been at all times since as such, and has been at all time since said date, and now is, the duly elected, qualified and acting Trustee in Bankruptcy of said estate of said bankrupt Leonard J. Woodruff; that at all times herein mentioned the United States District Court for the Southern District of California was one of the District Courts of the United States.

IV.

That heretofore and prior to the filing of the bankruptcy petition of Leonard J. Woodruff in this court on the 5th day of July, 1939, to wit, in the month of March, 1939, an action was pending in the District Court of the United States for the Southern District of California in which your petitioner, plaintiff herein, M. E. Heiser, was the plaintiff, and in which Leonard J. Woodruff, the bankrupt herein, was therein the defendant, said action being known in the files of the District Court of the United States for the Southern District of Cali-

fornia, as action No. 7256-C, entitled "M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al."; that in said action the defendant Leonard J. Woodruff was duly and regularly served with process, to wit, the summons and complaint, and thereafter upon evidence being submitted to the court in said District Court for the Southern District of California, duly made, gave and entered its judgment in favor of your petitioner herein, M. E. Heiser, and against the bankrupt herein, Leonard J. Woodruff; that said judgment was so made, given, rendered, and entered on the 20th day of March, 1939, and was for the principal sum of $164,000.00, together with interest and costs; that no part of said judgment, no part of the interest, and no part of the court costs has ever been paid and is now entirely unpaid, and said judgment is entirely unsatisfied and is an existing, valid, unpaid judgment; that at the time of the making, rendering, and entry of said judgment the said District Court for the Southern District of California had jurisdiction of the person of the defendant Leonard J. Woodruff and had jurisdiction of the subject matter of said action; that after being served with summons and complaint in the said last mentioned action the said Leonard J. Woodruff appeared in said action by counsel of his own selection, Ames Peterson and Edward Fitzpatrick, and appeared in open court personally and entered into a stipulation under the terms of which the court permitted evidence to be introduced on behalf of both the plaintiff M. E. Heiser and the defendant Leonard J. Woodruff, and the trial under said stipulation with respect to the value of certain precious and semi-precious stones, consisting of sapphires, opals and zircons, converted and taken by defendant Leonard J. Woodruff, involved in said action, occupied a period of approximately eight days; that evidence was introduced with respect to said values, both by the plaintiff M. E. Heiser and by the defendant Leonard J. Woodruff; that at or about the same time the said Leonard J. Woodruff appeared by counsel and moved to vacate and set aside the judgment hereinbefore referred to in said action, and the motion and application of said Leonard J. Woodruff was denied by an order of said District Court, duly made, given and entered; that after the hearing of the testimony respecting values, the court refused to change,

vacate or otherwise modify the judgment of March 20, 1939, which fixed the value of said gems as stated in said original judgment, to wit, $164,000.00; that the judgment of the District Court of the United States for the Southern District of California, in said action of Hesier vs. Woodruff, is a final judgment.

V.

That after the election and qualification of P. M. Jackson as Trustee in Bankruptcy of the Estate of Leonard J. Woodruff in the Eastern District of Oklahoma, Willie May Woodruff, Ida Belle Woodruff, Leonard J. Woodruff, Jr., Marguerite Woodruff, and Harold Woodruff, together with numerous other persons, all claiming to be creditors of the bankrupt Woodruff, filed with the Honorable Geo. F. Clark, as Referee in Bankruptcy, their written application alleging that the judgment in favor of M. E. Heiser and against the bankrupt Leonard J. Woodruff, as aforesaid, was not a good and valid jugdment, and prayed the court, to wit, the said Honorable Referee in Bankruptcy Geo. F. Clark, to make his order permitting and instructing P. M. Jackson, the Trustee in Bankruptcy, to proceed to attack said judgment and to cause the same to be vacated, set aside, appealed from, and otherwise vacated and nullified; that the petition of said creditors is in the form, letters, words and figures as shown in the copy attached hereto, marked Exhibit 1 and made a part of this petition as though fully set forth herein, reference to which is hereby expressly made; that at the same time as the filing of said alleged creditors' petitions, as aforesaid, Exhibit 1, P. M. Jackson as Trustee filed with the said Honorable Geo. F. Clark, Referee herein, his petition asking leave to attack the said judgment in the said case of Heiser vs. Woodruff; that said petition was in the form, letters, words and figures as is shown in a copy thereto attached hereto, marked Exhibit 2, reference to which is expressly made as though fully set forth herein; that upon the presentation of such petitions the said Referee, Honorable Geo. F. Clark, made his order expressly instructing and authorizing and directing the Trustee in bankruptcy, P. M. Jackson, to employ counsel and to proceed to California and to attack, vacate, set aside, appeal from, and otherwise

seek to set aside the effect of the said judgment in the case of Heiser vs. Woodruff, No. 7256-C, as aforesaid; that said order of said Referee recited the proper place to attack said judgment was in the California courts. Copy of said order in the exact form, letters, words, and figures as made by said Referee, is attached hereto marked Exhibit 3, and special reference thereto is hereby made the same as though incorporated and set forth at length herein.

VI.

In accordance with, and pursuant to, the authority so vested in P. M. Jackson as Trustee in Bankruptcy herein by the order of said Referee Exhibit 3, the said P. M. Jackson employed competent counsel in California, to wit, Francis Cobb, the person referred to in the order of the Referee, and joining with the bankrupt Leonard J. Woodruff and his counsel, prepared pleadings of their own choosing and instituted proceedings in the District Court of the United States for the Southern District of California, seeking, first, to intervene in said proceedings in behalf of the Trustee P. M. Jackson; second, seeking to vacate and set aside the judgment of March 20, 1939; and third, instituting an independent equitable proceeding attacking said judgment for fraud in the procurement of said judgment, attacking said judgment for alleged insufficient service of process upon the bankrupt; on the ground that the complaint did not state a cause of action; on the ground that the allowance of interest in said judgment was not supported by the complaint and was contrary to law; on the ground that the complaint contains three separate counts and alleged that the judgment does not show upon which count the same is based; on the ground that the complaint is defective in that the causes of action are barred by the various statutes of limitations of the State of California; on the alleged ground that the complaint shows that the title of the merchandise alleged to have been converted passed to the Golden State Gem Company of Nevada; on the ground that the complaint does not show title in the plaintiff Heiser; on the ground that the complaint was barred by laches; on the ground that the bankrupt and P. M. Jackson as Trustee of the Estate of Leonard J. Woodruff, the bankrupt, have been prevented

from presenting defenses by reason of fraud, accident, surprise, and excusable neglect; upon the ground that the judgment was obtained by fraud. That the said District Court of the United States for the Southern District of California, after the submission of the proceedings so instituted by the bankrupt Woodruff and by P. M. Jackson, Trustee in Bankruptcy for the estate of Leonard J. Woodruff, upon the affidavits of P. M. Jackson, the bankrupt Leonard J. Woodruff, and others, and after said P. M. Jackson, Trustee, and Leonard J. Woodruff declined to offer any additional evidence, oral or documentary, in support of his proceedings and motions, duly made its order refusing to set aside and vacate the judgment in the said case of Heiser vs. Woodruff, No. 7256-C, and refused to grant any relief to either said P. M. Jackson as Trustee or the bankrupt Leonard J. Woodruff; that upon being advised of the unsuccessful result of said litigation so instituted by P. M. Jackson, Trustee, the said alleged creditors, Willie May Woodruff, Ida Belle Woodruff, Leonard J. Woodruff, Jr., Harold Woodruff, and Marguerite Woodruff, petitioned the said Honorable Geo. F. Clark, Referee in Bankruptcy in the Eastern District of Oklahoma, to authorize the expenditure of the funds of the estate of the bankrupt to permit a review thereof, to wit, a review of the orders and rulings and judgments of the said District Court for the Southern District of California to the United States Circuit Court of Appeals for the Ninth Circuit; thereupon the said Honorable Geo. F. Clark made his order permitting said review and permitting the expenditure of funds of the estate of the bankrupt by the Trustee P. M. Jackson for said purpose of appealing in said proceeding last above set forth, and P. M. Jackson drew the checks for the necessary funds for the printing of the transcript on appeal, the briefs before the Ninth Circuit Court, and payment of the other expenses necessary and incident to said appeal, which said checks were signed by said P. M. Jackson as Trustee in Bankruptcy of the Estate of Leonard J. Woodruff and were counter-signed by the Honorable Geo. F. Clark as Referee in Bankruptcy, and which checks were drawn upon funds on deposit, to wit, assets of the estate of the bankrupt Leonard J. Woodruff.

VII.

That on appeal in the United States Circuit Court of Appeals for the Ninth Circuit the proceeding became and was known as "P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff, Bankrupt, and Leonard Woodruff, Appellants, vs. M. E. Heiser, Appellee," No. 9356; that said P. M. Jackson, Trustee, prosecuted said matter to a final decision in said Circuit Court and on the 30th day of April, 1940, said Circuit Court duly made, gave, rendered, and entered its decision in favor of M. E. Heiser, the appellee, and against P. M. Jackson, Trustee in Bankruptcy of the estate of Leonard J. Woodruff, and against Leonard J. Woodruff, the bankrupt; that said decision expressly recited and determined that the proceeding by P. M. Jackson, Trustee of the estate of Leonard J. Woodruff, bankrupt, was an independent equitable proceeding attacking the original judgment of Heiser, plaintiff, vs. Woodruff, defendant, as aforesaid, and affirmed the judgment, rulings, and orders of the District Court for the Southern District of California, which refused any relief to P. M. Jackson, Trustee, and Leonard J. Woodruff, the bankrupt, in respect to said judgment and in respect to their attacks upon it; that from said decision and judgment of the United States Circuit Court of Appeals for the Ninth Circuit, no appeal or review or petition for rehearing was filed, and the same became a final judgment and was on and prior to the first day of November, 1940, a final judgment. That the decision of said court is attached hereto, marked Exhibit 4.

VIII.

That within the time allowed by law, that is to say, within six months, immediately subsequent to the first meeting of creditors of the estate of the bankrupt Leonard J. Woodruff, and on the 20th day of July, 1939, M. E. Heiser filed with the Honorable Geo. F. Clark as Referee in Bankruptcy herein, in open court, a proof of claim; that said proof of claim was in the form as prescribed by the Supreme Court of the United States in its General Orders fixing the form of Proof of Debt that should be used by creditors in the filing of their claims with the Referee in Bankruptcy in bankruptcy cases; that said proof of debt was duly executed by

the judgment creditor M. E. Heiser, duly subscribed and sworn thereto before an official authorized to take oaths, and attached thereto the official certificate, seal and signature of such official, to wit, a Notary Public; that there was attached to said proof of debt an exemplified copy of the judgment in the case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, Defendant, No. 7256-C, in the District Court of the United States for the Southern District of California; that thereafter and after the decision in the case of P. M. Jackson, Trustee, Appellant, vs. M. E. Heiser, Appellee, No. 9356 in the United States Circuit Court of Appeals for the Ninth Circuit, was rendered, the said M. E. Heiser filed with the said Honorable Geo. F. Clark, a supplement to his proof of debt, which Supplement was in the form as prescribed by the Supreme Court of the United States in its General Orders requiring proof of debt in bankruptcy to be filed in a certain manner and form; that said supplement to said proof of debt of said M. E. Heiser was duly signed and sworn to in the manner provided by law and had attached thereto the seal, certificate, and signature of the person authorized to take oaths as required by law; that there was attached to such supplement to proof of debt a certified copy of the decision and decree of the United States Circuit Court of Appeals for the Ninth Circuit in proceedings No. 9356, P. M. Jackson, Trustee in Bankruptcy, et al., Appellants, vs. M. E. Heiser, Appellee.

IX.

That the bankrupt Leonard J. Woodruff, notwithstanding his previous unsuccessful two attempts to attack the validity and regularity of the judgment as rendered in the District Court of the United States for the Southern District of California, in the case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, Defendant, and his unsuccessful attack against said judgment in the United States Circuit Court of Appeals for the Ninth Circuit, filed written objections to the allowance of the claim of M. E. Heiser and sought to attack said judgment upon the same identical grounds that he had previously twice attacked before the said District Court for the Southern District of California and before the United States Circuit Court of Appeals for the Ninth Circuit; that

alleged creditors, Willie May Woodruff, the wife of the bankrupt; Ida Bell Woodruff, the mother of the bankrupt; Margueritte Woodruff, the daughter of the bankrupt; Harold Woodruff, a son of the bankrupt; and Leonard J. Woodruff, Jr., a son of the bankrupt, each and all of them, filed with the Honorable Geo. F. Clark as Referee in Bankruptcy herein, their written objections seeking to attack the judgment in the case of Heiser vs. Woodruff upon the same identical grounds as has the Trustee in Bankruptcy herein, P. M. Jackson, attacked said judgment in the proceedings theretofore instituted by him, as hereinbefore set forth; that the said Referee in Bankruptcy, the Honorable Geo. F. Clark, set the objections of the bankrupt Leonard J. Woodruff, Willie May Woodruff, Ida Belle Woodruff, Harold Woodruff, Margueritte Woodruff, and Leonard J. Woodruff, Jr., for hearing for the 15th day of November, 1940, in the courtroom of the District Court in the Postoffice Building at Ardmore, Oklahoma; that at said time and at said place, M. E. Heiser appeared by his counsel, M. S. Meyberg, Rupert B. Turnbull, and T. G. Gibson, and offered in evidence, and there was received by the Court, the following documents as proof of said claim, each and all of which were duly exemplified by the certificates under the signature and seal of the respective custodians of the originals of said documents; that is to say, the Clerk of the United States District Court for the Southern District of California, and the certificate of the Judge of the District Court for the Southern District of California, said certificates being in the form prescribed by the rules and by law, and over the seal of the said District Court, to wit: The original claim of M. E. Heiser; the Supplement to the Claim of M. E. Heiser; the Complaint in the case of Heiser vs. Woodruff, and the Return of the United States Marshal for the Southern District of California, showing return of service thereon; the certificate and affidavit of service of summons and complaint as made by the United States Marshal for the Southern District of California, showing service of summons and complaint in the case of Heiser vs. Woodruff, upon the defendant Woodruff; the Default by Clerk; the Judgment of March 20, 1939, by the District Court after hearing of evidence; the Notice of Motion and Motion of

Leonard J. Woodruff to vacate and set aside the judgment of the District Court for the Southern District of California; the affidavits offered by and on behalf of Woodruff in respect to the Motion to Vacate the Judgment in the case of Heiser vs. Woodruff; the Order of the Court on the motion of Woodruff to vacate (June 8, 1939); the certified copy of the Minutes of the District Court of the United States for the Southern District of California showing the names of the witnesses sworn and the exhibits of documentary evidence of proof introduced; the Order of the Court after the hearing of the evidence pursuant to the stipulation of the parties; the Petition by Jackson as Trustee before the referee for an order authorizing Jackson to proceed in California to contest the judgment in the case of Heiser vs. Woodrufff; the Petition by all other creditors as filed before the Referee, Geo. F. Clark, in Oklahoma (including the said present objectors), praying for an order authorizing the Trustee Jackson to proceed to California and contest the judgment in the case of Heiser v. Woodruff; the order of the Referee, Geo. F. Clark, authorizing and instructing Jackson to contest the Heiser judgment in California, and authorizing the employment of counsel for that purpose; the Petition of Creditors praying the Referee, Geo. F. Clark, to authorize payment of costs on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the matter of Jackson, Trustee, vs. Heiser; Jackson's affidavits of merit; the Heiser answering affidavits of both Heiser and Leonard J. Meyberg; the Judgment of September 26, 1939, by the United States District Court for the Southern District of California; Notice of Appeal by P. M. Jackson, et al., to the Circuit Court of Appeals for the Ninth Circuit; the appellant's statement of points relied upon on said appeal; the certified copy of the Opinion and Decision of the United States Circuit Court of Appeals for the Ninth Circuit in Jackson vs. Heiser, No. 9356, the Mandate of the United States Circuit Court of Appeals in the case of Jackson vs. Heiser, No. 9356; the Order approving the bond of P. M. Jackson as Trustee;

That by said proof it was made to appear conclusively that the judgment, the basis of the claim of M. E. Heiser

herein, was a final judgment; that it was made to appear conclusively that said judgment had been attacked unsuccessfully by the bankrupt in proceedings instituted by him alone in the first instance; that it was made to appear conclusively that the same persons who are now objecting to said judgment as a conclusive judgment, had petitioned this court for an order requiring the Trustee herein, P. M. Jackson, to attack the Heiser judgment, and that the said P. M. Jackson had attacked said judgment for an alleged fraud in its procurement, and otherwise, and on the same grounds upon which objectors now seek to attack it; that it was made to appear conclusively that the said judgment of Heiser vs. Woodruff, aforesaid, was a final judgment and was not void upon its face, or at all; it was made to appear conclusively that the judgment in the United States Circuit Court of Appeals for the Ninth Circuit, in the matter of P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, vs. M. E. Heiser, was a final judgment and not void upon its face, or at all; it was made to appear conclusively by such proof that the objectors, Leonard J. Woodruff, the bankrupt, Willie May Woodruff, Ida Belle Woodruff, Harold Woodruff, Margueritte Woodruff, and Leonard Woodruff, Jr., and each of them, were in privity with the Trustee, P. M. Jackson, and P. M. Jackson acted in behalf of all creditors, including said objectors, in his attack upon the Heiser judgment, and that said objectors were bound by the result of the litigation so instituted and carried on by said P. M. Jackson, as Trustee, on their behalf; that it was made to appear conclusively that said objectors herein were estopped by said judgments, to wit, the final judgments in the case of Heiser vs. Woodruff, and in the case of Jackson as Trustee vs. Heiser; it was made to appear that the District Court for the Eastern District of Oklahoma was legally bound to give full faith and credit to the final judgments and decrees of the United States Circuit Court of Appeals for the Ninth Circuit, in the matter of P. M. Jackson vs. Heiser, No. 9356, and was legally bound to give full faith and credit to the decree of the District Court of the United States for the Southern District of California, to wit, the final judgment in the case of Heiser vs. Woodruff, No. 7256-C.

X.

That upon making the proof, as aforesaid, the said M. E. Heiser rested and the objectors proceeded to attempt to offer evidence consisting in part of the same documentary proof which they had theretofore used upon the trial in the case of M. E. Heiser, Plaintiff, vs. Leonard Woodruff, Defendant, in the said District Court of the United States for the Southern District of California, and in the matter of P. M. Jackson, Trustee, vs. Heiser, No. 9356, in the United States Circuit Court of Appeals for the Ninth Circuit, to wit, certified, photostatic copies of exhibits which had been offered and received in such proceedings; that to such offers of proof and to such attacks by the objectors against the validity of such judgments, M. E. Heiser made his objection that it was an attempt to re-try and to unsettle and to annul that which had been regularly settled and adjudicated by the said judgments, and was an attempt to re-litigate and re-adjudicate the matters and things that had been theretofore regularly litigated and regularly adjudicated and regularly determined, and which were final judgments; that the said M. E. Heiser objected that the objectors were bound by the decisions as against P. M. Jackson and against the bankrupt as they, the objectors, in their capacity of the alleged creditors of the bankrupt, were in privity with him, and that he, P. M. Jackson, as Trustee, had acted for and on behalf of said objectors; on the ground that the court could not permit a third attack upon said judgment as the matters and things decided by said judgments were res judicata; that the court could not permit the said objectors to be heard, as under the law they could not act in attacking the claim of a creditor where the Trustee had already attacked the judgment claim, and that to permit said further attacks constituted a multiplicity of suits; that the court overruled said objections of said M. E. Heiser and announced that he would permit the objectors to re-try all the matters and things involved in the case of M. E. Heiser vs. Leonard J. Woodruff, Defendant, as heretofore was pending and was decided in the District Court of the United States for the Southern District of California, and would permit the re-trial before him, the Honorable Geo. F. Clark, as Referee, of all the

matters relating to value of the gems, opals, zircons, sapphires, etc., as theretofore had been tried for a period of eight days before the District Court of the United States for the Southern District of California in said case of Heiser vs. Woodruff; that the said Referee did permit the retrying of the matters and things theretofore sought to be tried by P. M. Jackson as Trustee in Bankruptcy, in the matter of P. M. Jackson, Trustee, vs. M. E. Heiser, both in the District Court of the United States for the Southern District of California, and in the United States Circuit Court of Appeals for the Ninth Circuit, which trial commenced but was not completed.

XI.

That the objectors being unable at said time to produce all their alleged evidence in support of the merits of said actions last above named, requested and obtained a continuance of such trials on said objections to and until the 20th day of January, 1941; that the said Honorable Referee Clark has ordered the parties to return on the 20th day of January, 1941 to the courtroom on the second floor of the Federal Building, Ardmore, Oklahoma, and on said last mentioned date, and as stated, will permit the said objectors hereinbefore named, and each of them, including the bankrupt, to present evidence on the merits respecting the defenses which they may have on the merits, or otherwise, to off-set, overcome, and set aside the judgments in the said case of Heiser vs. Woodruff as rendered by the said District Court of the United States for the Southern District of California, hereinbefore set forth, and overcome the effect of the judgment as heretofore rendered in the United States Circuit Court of Appeals for the Ninth Circuit in the matter of P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff vs. M. E. Heiser, No. 9356.

XII.

That unless restrained, the said objectors, with the permission of the said Honorable Referee Clark, will proceed at great length and at great expense to M. E. Heiser, to offer evidence, oral, documentary, and by deposition, attempting to re-litigate each, every, and all of the matters

and things now conclusively and finally determined in the said case of Jackson, Trustee, vs. Heiser, and in the case of Heiser vs. Woodruff, as aforesaid; that unless restrained said objectors, said Referee, and said bankrupt, will attempt to compel and will compel, your petitioner M. E. Heiser, now at San Francisco, California, to cause his attorneys, who are residents of the County of Los Angeles, California, to journey approximately 1700 miles from their homes and offices to Ardmore, Oklahoma, to remain there over a period of weeks to produce witnesses, all of whom reside, other than M. E. Heiser, in the State of California; to pay the traveling expenses of such witnesses from California to Ardmore, Oklahoma, and return; to pay the maintenance of such witnesses and attorneys while enroute from California to Ardmore and return; to pay the maintenance of such witnesses and attorneys while in Ardmore; to expend large sums in the payment of expert witnesses' fees to gem experts to be called as witnesses on behalf of M. E. Heiser; to pay out fees for the taking of depositions; to pay out fees to court reporters and stenographers; to obtain great quantities of and pay for certified copies of records; to pay the fees of the officials certifying such records; to pay the costs of court reporters in the preparation of transcripts; to pay the costs on review and on appeal; will compel M. E. Heiser to submit to a multiplicity of suits to therein re-litigate what has already been litigated, what has already been adjudicated, what has already been settled in favor of M. E. Heiser by the previous final existing decrees of the United States Circuit Court of Appeals for the Ninth Circuit in Jackson vs. Heiser, and in the final judgment of the District Court for the Southern District of California in the matter of Heiser vs. Woodruff, and your petitioner alleges that if the said objectors are permitted to unlawfully and illegally re-try such matters the same will impede your petitioner in the proper administration of the allowance of his claim; that the said objections are vexing and harassing, and unfounded in law or in fact; that the said objectors will continue to subject your petitioner to unnecessary defenses of the same matters heretofore litigated, heretofore adjudicated, and heretofore settled; that said unnecessary proceedings will necessitate the expenditure of thousands of

dollars on the part of M. E. Heiser; that by the acts, conduct, and proceedings of the said objectors your petitioner is being deprived of the legal benefit, the practical benefit, and the value of the final decrees now in favor of your petitioner M. E. Heiser and against the bankrupt Leonard J. Woodruff, and against P. M. Jackson as Trustee in Bankruptcy of the estate of Leonard J. Woodruff, which are binding upon them and each of them, and which are binding upon persons in privity with them, to wit, the said objectors. That said objections were filed by defendants and are being prosecuted solely for the purpose of vexing, harassing and delaying the plaintiff in the collection of his judgment claim, and to force plaintiff to compromise and partially release his claim, by reason of the prohibitive cost of defending himself from said attacks.

XIII.

Your petitioner alleges that they do not deny the right of the Referee in Bankruptcy to determine the legal validity only of the said judgments hereinbefore referred to, but that your petitioner denies the legal right of the objectors to re-try and re-litigate the subject matter of the judgments hereinbefore referred to. Petitioner alleges that he has no plain, adequate or speedy remedy at law, as more fully appears by the facts hereinbefore and in this petition alleged. Your petitioner alleges that the objectors are, and should be, estopped to present their objections and that the objectors should not be permitted to re-try and re-litigate the matters and things heretofore litigated and finally determined on the following grounds:

1. For the reason that the said objectors and the said Referee are bound to give full faith and credit to the final judgment and the final decree of the United States Circuit Court of Appeals for the Ninth Circuit in the matter of P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, vs. M. E. Heiser, No. 9356, and are compelled to give full faith and credit to the final judgment and decree of the United States District Court for the Southern District of California in the matter of M. E. Heiser vs. Leonard Woodruff.

2. On the ground that the objectors and each of them are estopped by the judgments aforesaid, and described in No. 1 above, from further attacking said judgments, on the ground that the same attacks were made on the same grounds by their Trustee in Bankruptcy, P. M. Jackson.

3. On the ground that to permit the retrial on the merits of the litigation described in No. 1 above, is to create a multiplicity of suits in an attempt to re-determine and re-litigate the matters and things now finally determined and decided.

4. On the ground that the Honorable Referee in Bankruptcy under the law may inquire only into the validity of the said judgments described in No. 1 above, and it appearing that said judgments are not void upon their face, and it appearing that said judgments have been heretofore attacked for alleged fraud in their procurement, the Referee cannot permit the re-trying of said matters which are now final.

XIV.

Petitioner alleges that the objectors have threatened, and are threatening, that even though they be unsuccessful by a decision of the Referee on the merits, they will further attempt to re-litigate the matter by prosecuting reviews and appeals. Your petitioner alleges that such acts upon the part of the objectors will cause further embarrassment, expense, hinderance, and delay of the petitioner, and will subject him to additional extremely expensive and unnecessary multiplicity of suits, all with respect to the same subject matter which has heretofore been litigated and finally determined.

Wherefore, your petitioner, having no adequate, plain or speedy remedy at law, prays this court that it may issue forthwith, without notice, a preliminary injunction,

1. Restraining the objectors, Leonard J. Woodruff, the bankrupt; Willie May Woodruff, the wife of the bankrupt; Ida Belle Woodruff, the mother of the bankrupt; Margueritte Woodruff, the daughter of the bankrupt; Howard Woodruff and Leonard Woodruff, Jr., sons of the bankrupt, from proceeding further, or at all, in their objections to the merits

of the matters and things determined in the case of Heiser vs. Woodruff, as shown by the final judgment in that case as rendered by the District Court of the United States for the Southern District of California, and as determined and shown by the final judgment of the United States Circuit Court of Appeals for the Ninth Circuit in the case of P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, and Leonard J. Woodruff vs. M. E. Heiser, No. 9356.

2. That the court fix a return day and issue its order to show cause requiring the appearance and attendance of the said objectors before this court, at a time and place to be fixed by this court, and requiring said respondents to show cause why this court should not make its permanent order restraining and enjoining said objectors and said Referee, and each of them, from further embarrassing, hindering, delaying and impeding the administration of this estate by restraining each and all of said respondents from re-trying, re-litigating, and re-adjudicating the matters and things which have already been litigated, adjudicated, and settled, which are in favor of M. E. Heiser, the petitioner, as a judgment creditor in the said cases of Heiser vs. Woodruff, and P. M. Jackson, Trustee, vs. Heiser.

3. For such other and further relief, both in law and equity, as will do complete justice in respect to the parties.

4. For his costs herein expended and incurred.

LEONARD J. MEYBERG,
M. S. MEYBERG,
RUPERT B. TURNBULL,
Attorneys for Plaintiff.

M. E. HEISER, Plaintiff.

Filed December 30, 1940. W. V. McClure, Clerk, U. S. District Court.

[Verified.]

[Exhibit 1, application of creditors for order directing trustee to attack judgment, case No. 7623, United States

District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, Bankrupt, is identical with the application which appears at page 20.]

[Exhibit 2, application of trustee for authority to employ counsel, etc., case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, Bankrupt, is identical with the application which appears at page 21.]

[Exhibit 3, order authorizing and directing trustee to institute legal action etc., case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, Bankrupt, is identical with the order which appears at page 28.]

[Exhibit 4, Opinion, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser, is identical with Heiser exhibit V, which appears at page 291.]

Affidavit of Leonard J. Meyberg in Support of Plaintiff's Application for Temporary Restraining Order.

In the District Court of the United States in and for the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie May Woodruff, et al, Defendants.

United States of America, State of California, County of Los Angeles, ss.

LEONARD J. MEYBERG, being first duly sworn, deposes and says:

That he is one of the attorneys of record for M. E. Heiser

in the action in the District Court of the United States for the Southern District of California, M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, Defendant, and he is also one of the attorneys of record in the case of P. M. Jackson, trustee in bankruptcy of the Estate of Leonard J. Woodruff, bankrupt, and Leonard J. Woodruff vs. M. E. Heiser, No. 9401 in the United States Circuit Court of Appeals for the Ninth Circuit; that your affiant is one of the attorneys who actually produced the evidence, examined the witnesses before the District Court of the United States for the Southern District of California in the said case of M. E. Heiser vs. Leonard Woodruff, defendant, and that as such he is familiar with the evidence which was adduced, and which will be required to be presented before the Honorable Geo. F. Clark as Referee in Bankruptcy in the event M. E. Heiser is compelled to retry and relitigate upon the merits each, every and all of the things which have been adjudicated in the two first above causes and by the first two above named courts.

That trial of the matters and things involved in said case would in affiant's opinion require the production, among other things, of the following testimony for the following reasons:

First: the said action was one based upon the conversion by Leonard Woodruff of raw sapphires, zircons and opals consisting of both gem stock and industrial stock; that the value of said property so converted by Leonard Woodruff was as fixed by the trial court to wit: the said United States District Court for the Southern District of California in its judgment after hearing evidence submitted by plaintiff and defendant Woodruff as the sum of $164,000.00; that it will be necessary in any hearing on the merits before the Referee for said M. E. Heiser to obtain the evidence and produce first, evidence of bank officers of the former United States National Bank of Los Angeles to show the conditions under which M. E. Heiser deposited said gems and gem stock with and in the custody of said bank; to show the conditions under which, and the circumstances under which, Leonard J. Woodruff acquired possession thereof, and converted the same; that it would require the production in person before

the said Referee in Bankruptcy in Ardmore, Oklahoma, of numerous gem experts to wit: persons trained and skilled and of long experience in the mining, handling and marketing of precious and semi-precious stones of the type and kind involved which were, and are, sapphires rough cut, opals and zircons rough cut, and jade; that it would require the production of experts trained and skilled in the mining, cutting and the use and marketing of commercial or industrial sapphires of the type of which a portion here involved are, and such as are used in the making of bearings for railroad engines and other machinery; that it would require the production of expert witnesses to establish first, the quality of the said material, dividing the same into semi-precious gem stock, jewelry stock and industrial or commercial stock, the qualifications of such expert witnesses also as to, and their testimony concerning the value at the then market at Los Angeles, California, where the gems were converted by Woodruff. It would require the employment of such experts, the transportation of them from Los Angeles, California, to Ardmore, Oklahoma, a round-trip of approximately 3500 miles, and the payment of the fees of such witnesses, the payment of their maintenance while enroute to and from Ardmore, and during their stay at Ardmore as witnesses; that the trial at Ardmore or elsewhere in the State of Oklahoma of said matters upon their merits would require the production of other witnesses corroborating the documentary proof concerning the acts and conduct of Leonard J. Woodruff with respect to the conversion of the said property; would require either the production of witnesses or the taking of the depositions of officials of Los Angeles County, California, to wit: deputy sheriffs and deputy sheriff keepers with respect to their acts and conduct in causing the sale to be had of the gems and gem stock purportedly in pursuance of writ of execution obtained by Leonard J. Woodruff in an action heretofore pending in the Superior Court for the State of California in and for the County of Los Angeles, in which the said Leonard J. Woodruff was then plaintiff and in which Golden State Gem Company of Nevada and others, but not M. E. Heiser, were defendants; that the proof on behalf of M. E. Heiser on a re-trial would require the production of exemplified copies of records of

the said Superior Court of the State of California in and for the County of Los Angeles, of the records of the District Court of the United States or the Southern District of California, of the records of the United States Circuit Court of Appeals for the Ninth Circuit; would require the production of witnesses to identify originals of certain documents; that said expense of the aforesaid witnesses and documents would be exorbitantly excessive practically, would run into thousands of dollars, and said M. E. Heiser would be unable to recover most of such expenditures as a greater portion thereof would be non-taxable costs. That the costs taxed and allowed to plaintiff M. E. Heiser by the United States District Court in the said matter of Heiser vs. Woodruff, 7256-C, are $1595.0[illegible]nd have not been paid.

That the costs of producing expert testimony at the eight day hearing before the said court, the cost of attorney fees and producing other witnesses and evidence before said court is not included in said costs.

That all of the matters and things sought to be re-tried before the Honorable Geo. F. Clark, Referee in Bankruptcy at Ardmore, Oklahoma, are matters which are finally settled and decided under the final decrees and final judgments in the said proceedings of P. M. Jackson, trustee in bankruptcy of the Estate of Leonard Woodruff, bankrupt, and Leonard Woodruff vs. M. E. Heiser, No. 9356, in the United States Circuit Court of Appeals for the Ninth Circuit, and which were finally decided by the final judgment of the United States District Court of the Southern District of California in the action entitled M. E. Heiser, plaintiff, vs. Leonard J. Woodruff, defendant; that the said objectors herein, Willie Mae Woodruff, Ida Belle Woodruff, Leonard Woodruff, Leonard Woodruff, Jr., Howard Woodruff and Marguerite Woodruff, and each of them, have had their day in court and have had litigated on their behalf the matters and things they now seek to re-litigate; that the action of the said objectors in now again objecting constitutes an actual harassment and vexation and an actual expense of enormous proportions and of many thousands of dollars to the said plaintiff M. E. Heiser, and constitutes an unnecessary delay in the payment of the judgment of

M. E. Heiser, and payment of dividends thereon out of the Estate of Leonard J. Woodruff, bankrupt.

LEONARD J. MEYBERG.

Subscribed and sworn to before me this 18th day of December, 1940. Paul Joseph, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

Separate Answer of the Defendant Leonard J. Woodruff.

Filed January 30, 1941. W. V. McLure, Clerk U. S. District Court.

In the District Court of the United States in and for the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie May Woodruff, et al., Defendants. No. 426 Civil.

To the Honorable Judge of the District Court of the United States in and for the Eastern District of Oklahoma:

Comes now the defendant Leonard J. Woodruff and for his separate answer herein, states to the Court:

I.

Plaintiff's complaint is insufficient and this action should be dismissed for the following reasons:

(a) Plaintiff seeks to enjoin the trial of a matter pending before Honorable Geo. F. Clark, Referee in Bankruptcy of and for this Court, without making said Referee a party hereto and said Referee is a necessary party to this action;

(b) Plaintiff seeks to enjoin the trial of a matter pending before Honorable Geo. F. Clark, Referee in Bankruptcy, which matter was referred to said Referee for hearing by this Court and said Bankruptcy Court, being a part of this Court, plaintiff thereby seeks to have this Court enjoin itself from proceeding in a cause and matter which it is required to adjudicate and determine under the laws of the United States of America applicable thereto:

(c) The allegations of plaintiff's complaint are insufficient in law, even if true, to entitle plaintiff to the relief prayed for;

(d) The allegations of plaintiff's complaint do not constitute a cause of action in favor of plaintiff and against this defendant;

(e) It is the duty of the Bankrupt Court to inquire into plaintiff's claim and into the judgment underlying it;

(f) Plaintiff's complaint shows upon its face that he is now estopped by his own conduct to complain of and about the proceedings had and being had before the Referee in Bankruptcy.

II.

Answering the first numbered paragraph of plaintiff's complaint defendant says he is without information sufficient to affirm or deny the allegations thereof with respect to the citizenship of the plaintiff. In connection therewith defendant says that he has information to the effect and believes that plaintiff has lived and engaged in business in the United States of America for the greater part of the past twenty-five years. Defendant admits the allegations of residence of himself and his co-defendants.

III.

Defendant admits the allegations of the second numbered paragraph of plaintiff's complaint and in addition thereto shows to the Court that on the 26th day of August, 19[illegible] upon application duly made and after the filing of a petition for arrangement under Chapter XI of the Bankruptcy Act of 1938, and after due notice having been given thereof and of the hearing thereon, the Honorable Geo. F. Clark, as sitting Referee in Bankruptcy, entered an order in said cause staying the administration of said matter in bankruptcy and permitting the filing of objections to claims by this defendant and others, a copy of said order being hereto attached, marked Exhibit "A," and made a part hereof. No appeal was taken from said order and the same has become final and said matter is now pending before said Referee in Bankruptcy upon the petition of this defendant for an

rangement under said Chapter XI of said Bankruptcy Act and under said order of August 26, 1940. Fifty-four secured and unsecured claims have been filed in said proceeding by creditors claiming a total of $995,982.62.

IV.

Defendant admits the allegations of the third numbered paragraph of plaintiff's complaint and in addition thereto alleges and says that the plaintiff herein concurred in the election of said P. M. Jackson as Trustee and voted for the said P. M. Jackson to be such trustee.

V.

Answering the fourth numbered paragraph of plaintiff's complaint, defendant admits that judgment by default was rendered against him by the District Court of the United States in and for the Southern District of California, on the 20th day of March, 1939 in a case in which the plaintiff herein, M. E. Heiser, was plaintiff and this defendant and others were defendants, said judgment being for the sum of $[illegible] principal, plus $113,036.71 interest, and $[illegible] costs; admits that said judgment is unpaid, but denies that same is a valid judgment; denies that the District Court for the Southern District of California had jurisdiction over this defendant at the time of its rendition; admits that this defendant employed Ames Peterson and Edward Fitzpatrick as his attorneys in an endeavor to secure an order vacating said judgment and permitting this defendant a trial upon the merits of plaintiff's action; alleges that said attorneys entered a special appearance for this defendant in said action and alleges that all matters and things thereafter occurring in said case on behalf of this defendant were under said special appearance; alleges that defendant's motion to vacate said judgment was filed [illegible] after the rendition thereof and notwithstanding prompt appearance and the use of diligence on the part of this defendant the District Court of the United States for the Southern District of California refused to vacate and set aside said judgment and refused to give this defendant a trial upon the merits of said action. A copy of said motion [illegible] being hereto attached, marked Exhibit "B" and made a part hereof.

Defendant admits that a stipulation was entered into under which the California Court heard evidence as to the value of the property which the plaintiff claimed this defendant converted but in this connection defendant shows to the Court that the allegations of plaintiff's complaint in the case in the California Court in which the plaintiff alleged that this defendant had converted certain property from him, were untrue in that the plaintiff did not at any time own or have the possession and control of the property which he alleged was converted and was never possessed of the same or similar property of a value which in any wise approximated the principal amount of the judgment. The evidence as to value was based upon and the proceedings were had upon the false premise that the plaintiff owned said property and that the defendant had converted the same from him, when as a matter of fact, plaintiff never owned and never had the possession of the same and defendant never at any time converted the same of and from the plaintiff.

Upon information and belief defendant denies that said hearing lasted eight days and alleges the facts to be that said hearing occupied only a part of each of five days and that the total time consumed in the hearing did not exceed two days of eight hours each.

Defendant admits that the District Court of the United States for the Southern District of California after hearing evidence, which evidence was based upon the false premises aforesaid, refused to change the amount of the judgment but alleges in this connection by its act in so doing said court deprived this defendant of property without due process of law and without giving him his day in court. In this connection defendant says that he verily believes that if said court had heard evidence upon the merits of said controversy no judgment would have been rendered against him in said matter and the plaintiff would not have had a judgment against him, and this defendant pleads and prays for an opportunity to present to a court of *judtice* the facts in this case and states to this Court that he verily believes that if this Court or any court of competent jurisdiction will hear the facts with respect to the matters and things alleged in

plaintiff's complaint in the California case in which he obtained his judgment, defendant is confident that said judgment will be vacated, set aside and held for naught.

VI.

Answering the fifth numbered paragraph of plaintiff's complaint, defendant alleges upon information and belief that the matters and things therein set forth are substantially true.

VII.

Answering the sixth numbered paragraph of plaintiff's complaint, this defendant admits upon information and belief that the Trustee in Bankruptcy, P. M. Jackson, employed Francis Cobb to represent him in an endeavor to secure a hearing upon the *meirts* of the controversy between this defendant and the plaintiff in the California Court, and admits that a proceeding by motion was instituted in the District Court of the United States for the Southern District of California in which the Trustee sought permission to intervene in said action and be permitted to defend the same upon its merits; alleges that said proceeding was a summary proceeding by motion; alleges upon information and belief that the application of the Trustee for permission to intervene and for permission to defend upon the merits of the controversy as set out in plaintiff's complaint was denied by the District Court of the United States for the Southern District of California without a full inquiry into same and without allowing and giving said Trustee his day in Court. Defendant says that the hearing upon said motion constituted no more than a formal application to the court for permission to file appropriate pleadings setting up the matters and things which said Trustee believed to be material in behalf of the creditors of the estate of which he was Trustee and in support of his right to intervene in said action and to contest the same upon its merits. Upon the presentation of said motion for permission to intervene by the Trustee no evidence was heard or taken by the court and the merits of the controversy was in no wise inquired into and the motion of the Trustee was denied by the Court without hearing any evidence and without any inquiry into the

merits of the controversy and without the Trustee having been given an opportunity to present to the Court the merits of the controversy in a proper manner and without due and proper consideration being given to the motion of said Trustee for permission so to do.

This defendant admits upon information and belief that an appeal was prosecuted to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the District Court of the United States for the Southern District of California denying the motion of the Trustee for permission to intervene and be heard upon the merits of the matters and things set out in the plaintiff's complaint in said action and that the expense of said appeal was borne by the estate in bankruptcy.

VIII.

For answer to the seventh numbered paragraph of plaintiff's complaint, defendant admits that the order of the District Court of the United States in and for the Southern District of California was affirmed by the Circuit Court of Appeals for the Ninth Circuit and that a copy of the decision of said Court is attached to plaintiff's complaint herein and identified as Exhibit "4."

IX.

Answering the eighth numbered paragraph of plaintiff's complaint, defendant upon information and belief admits that the allegations therein contained are substantially true.

X.

Answering the ninth paragraph of plaintiff's complaint, defendant admits that he filed objections to the allowance of the claim of M. E. Heiser and alleges that the same was done as a matter of right and under and by virtue of the provisions of the order of August 26, 1940, copy of which is attached hereto as Exhibit "A," and defendant admits upon information and belief that his co-defendants herein likewise filed objections to the claim of the plaintiff herein; defendant admits that said objections came on for hearing before the Honorable Geo. F. Clark, Referee in Bankruptcy, in the court room at Ardmore on the 15th day of November,

1940, and that the plaintiff appeared by his counsel, M. S. Meyberg, Rupert B. Turnbull and T. G. Gibson. In this connection the defendant says that said objections were originally set for hearing on the 15th day of October, 1940, and said hearing was continued by the Referee until the 28th day of October, 1940, and was further continued at the request of the plaintiff herein until the 15th day of November, 1940. A copy of defendant's objections, together with the exhibits thereto attached is hereto attached, marked Exhibit "C" and made a part hereof.

The defendant admits that evidence was offered by the plaintiff in support of his claim and that the evidence offered was substantially as set out in the ninth numbered paragraph of his complaint. In this connection defendant says that the plaintiff did not offer the judgment roll in said matter, nor did he offer in support of his claim all of the minutes and orders of the United States District Court for the Southern District of California in said matter.

Defendant denies that by the proof offered it was made to appear that the judgment was final or that it had been unsuccessfully attacked by this defendant or by the Trustee, either upon the same grounds now urged by this defendant in his objections to said claim before the Referee in Bankruptcy or upon other grounds; denies that it was made to appear that said judgment was a final judgment, or that the opinion of the United States Circuit Court of Appeals for the Ninth Circuit, attached to plaintiff's complaint as Exhibit "4" was a final judgment upon the merits of the controversy. Defendant denied that said judgment is a final judgment before the Referee in Bankruptcy; denies that any proceedings had in the United States District Court for the Southern District of California or in the Circuit Court of Appeals for the Ninth Circuit, constitutes either a bar or an estoppel to the attack which is being made upon said judgment before the Referee in Bankruptcy or the right of the Bankruptcy Court to inquire into the merits of the judgment underlying plaintiff's claim.

XI.

Answering the tenth numbered paragraph of plaintiff's complaint defendant admits the Referee in Bankruptcy

overruled the objections of the plaintiff to the introduction of evidence by this defendant and the other objectors in support of their objections to the claim of the plaintiff herein; denies that the action of said Referee in so doing will permit a retrial of all the matters and things involved in the case of M. E. Heiser vs. Leonard J. Woodruff; alleges that the matters and things therein involved with respect to the merits of said controversy have never been tried or litigated. Defendant specifically denies that the action of said Referee will permit the retrying of matters and things heretofore sought to be tried in the proceedings instituted by the Trustee in the case of Heiser vs. Woodruff in the United States District Court for the Southern District of California and by the decision of the United States Circuit Court of Appeals for the Ninth Circuit and in connection therewith defendant says that said matters were never tried or *litigation,* either upon the application of this defendant or upon the motion of said Trustee in either of said California courts; that no evidence was heard upon the motion of the Trustee for permission to intervene and be heard and no evidence was heard by either of said courts upon the merits of said controversy or upon the truth and falsity of the substantial and material allegations of the complaint filed by the plaintiff in said action and upon which he obtained his judgment by default and defendant says that none of the orders, decrees or judgments entered in said matters in the California Courts constitutes either a bar or an estoppel to the proceedings before the Referee in Bankruptcy.

XII.

By way of affirmative defense defendant says that the plaintiff is now estopped to question the jurisdiction or the right of the Referee in Bankruptcy to proceed with said hearing or the right of this defendant to prosecute and to be heard upon his objections to plaintiff's claim for the following reasons:

(A) Plaintiff did not appeal from the order of August 26, 1940, attached hereto as Exhibit "A", but permitted the same to become final.

(B) After the Referee had continued the hearing on

said objections from the 14th day of October, 1940 to the 28th day of October, 1940, the plaintiff made application to the Referee for a further continuance until November 15, 1940, which continuance was granted the plaintiff.

(C) The plaintiff filed responses to the objections to his claim filed by this defendant's co-defendants.

(D) The plaintiff did not file a response to the objections to his claim filed by this defendant.

(E) The plaintiff appeared by his attorneys before the Referee at Ardmore on November 15, 1940 and participated in the hearing of the objections to his claim and in the hearing of his objections to other claims filed in said matter, which hearing continued until the afternoon of November 27, 1940, at which time said hearing was by agreement continued by the Referee until January 20, 1941, for two reasons, first, because the Referee could not continue with said hearing at said time, and secondly, because the objectors to the claim of the plaintiff desired more time in which to procure evidence to present to the Referee in support of their objections. At the time of said recess the objectors to the plaintiff's claim had upon the witness stand one Walter Calvin Smith; the direct examination of said Walter Calvin Smith had not been completed at the time of the recess and the plaintiff demanded that the Court require the objectors to return said Smith to the witness stand when the hearing was resumed on January 20, 1941, so that the plaintiff could cross-examine him and at the insistence of plaintiff the Referee ordered said witness to return at said time and ordered the objectors to have said witness present in court at said time. The plaintiff participated in the examination of said witness by objections to questions asked and to documentary evidence offered during the examination of said witness.

(F) The parties hereto stipulated in writing to the taking of depositions to be used upon the hearing of said objections, copy of which stipulation is attached, marked Exhibit "D", and made a part hereof. The plaintiff proceeded to exercise the privileges granted by said stipulation and did exercise them.

(G) The parties hereto again stipulated to the taking of depositions after the adjournment of the hearing on November 27, 1940, said stipulation being by wire and copies of said telegraphic communications being attached as Exhibits "E" and "F".

(H) The plaintiff submitted all of the matters and things set out in his complaint to the Referee in Bankruptcy for decision and the Referee passed thereon and decided the issues raised adversely to the plaintiff. Plaintiff submitted said controversy to the Referee without objection on his part to the jurisdiction of the Referee to pass thereon. Plaintiff has a right of appeal from the decision of the Referee adverse to him.

XIII.

For another and further defense and with respect to the matters and things set up in paragraphs numbered X, XI and XII of this answer, defendant says that by filing his responses to the objections to his claim filed by this defendant's co-defendants, in which responses defendant says that plaintiff urged substantially the same matters and things which he pleads in the first nine numbered paragraphs of his complaint herein, and by appearing before the Referee in Bankruptcy and submitting said matters to said Referee in Bankruptcy for decision, the plaintiff elected his forum and his procedure for the assertion and litigation of all the matters and things herein complained of and is bound by such election. Defendant says that plaintiff, after an adverse decision can not now rescind said election of remedies and of the forum for the assertion and litigation of his rights but is bound thereby.

XIV.

Answering the eleventh numbered paragraph of plaintiff's complaint, defendant admits that a continuance was requested by the objectors to the claim of the plaintiff herein; that no objections were made to said continuance by the plaintiff and that by agreement of the plaintiff and this defendant and with the approval of the Referee, said hearing was continued until the 20th day of January, 1941

XV.

Answering the twelfth numbered paragraph of plaintiff's complaint, this defendant denies that the plaintiff will be put to great expense in contesting the hearing before the Referee in Bankruptcy for the reason that plaintiff stated in open court before the Referee in Bankruptcy that he would not introduce any evidence in opposition to the evidence of the objectors to the claim of said M. E. Heiser, and the attorneys for the plaintiff have since stated that the plaintiff herein would have no evidence to introduce on the hearing before the Referee in Bankruptcy on the objections to the claim of M. E. Heiser, even though this Court should deny the plaintiff's prayer for an injunction herein.

Defendant denies that the objections filed by him to the claim of the plaintiff herein were without merit; denies that they were made for the purpose of vexing and harassing the plaintiff; denies that same will result in a multiplicity of law suits.

XVI.

In answer to the thirteenth numbered paragraph of plaintiff's complaint, defendant says that the plaintiff has a plain, speedy and adequate remedy at law by appeal; denies that the judgment underlying the plaintiff's claim is entitled to full faith and credit; denies that this defendant is estopped or barred from attacking said judgment; denies that to permit a trial of the matter on its merits will create a multiplicity of suits or redetermine and relitigate matters which have been determined and litigated.

In this connection defendant says that the Bankruptcy Court has full power and authority and it is its duty to inquire into the merits of the controversy upon which the judgment underlying plaintiff's claim is based and to determine whether or not same was obtained without fraud and collusion and that the same rests upon a real debt. And in this connection, defendant alleges, upon information and belief, that he will be able to prove by competent evidence that said judgment was and is not founded upon a real debt; that the plaintiff never had a good and valid claim

of action against this defendant; that this defendant was not indebted to the plaintiff in any sum at the time of the rendition of said default judgment; that said judgment was obtained by false testimony given by the plaintiff; that the allegations of plaintiff's complaint with respect to the ownership of the property therein set out are untrue and that the plaintiff was not possessed of the property therein described and of the value therein alleged and this defendant did not convert of and from the plaintiff the property therein described and set out or any property whatever.

XVII.

Defendant denies that his acts will cause unnecessary embarrassment, expense, hinderance and delay to the plaintiff and denies that his acts will cause the plaintiff multiplicity of suits but alleges the facts to be that this defendant is only endeavoring to secure his day in court, to which he is entitled and which he has never had, and alleges that if he is allowed his day in court and if permitted to disclose to the Bankruptcy Court the true facts with respect to the judgment underlying plaintiff's claim that this defendant believes in good faith that said claim will be disallowed by the Referee in Bankruptcy in accordance with the prayer of his objections to said claim.

In this connection defendant shows to the Court that the Golden States Gem Company of California was adjudged a bankrupt by the United States District Court in and for the Southern District of California sometime in the fall of 1929 and that in the month of February, 1930 plaintiff herein filed or caused to be filed in his behalf a claim in said bankruptcy *procedings* for the sum of $30,250.00, $30,000.00 of which amount represented a claim on the part of the plaintiff for the same property which the plaintiff in his subsequent suit against this defendant alleged was worth $164,000.00, and for which he obtained a default judgment in such amount, and defendant alleges upon information and belief that upon a trial of the merits of the judgment underlying the claim of the plaintiff in bankruptcy, he will be able to show by competent proof that the plaintiff under oath valued said property at amounts varying from $30,000.00 to $190,000.00, and defendant says

upon information and belief that if the claim of the plaintiff is allowed in said proceedings for an arrangement it will be allowed for a much less sum than that represented by the judgment underlying the claim for the reasons, as above stated, that defendant believes and alleges upon information and belief that plaintiff was not possessed of the property which he claims to have owned in his complaint in the case in which the judgment was rendered and if he was possessed of said property at said time or any part thereof, it was of much less value than that represented by the default judgment.

XVII.

For further answer and by way of further defense this answering defendant shows to the Court that under Rule No. 15 (B and C) of Civil Procedure of this Court, which rules apply in the trial of objections to the claim of plaintiff before the Referee in Bankruptcy, this defendant has a right amend his objections to the claim of the plaintiff herein upon the trial of said objections or at the conclusion of the trial thereof, and in the event that the objections heretofore filed by this defendant to the claim of the plaintiff are found to be insufficient in law and there is proof adduced at the trial substantiating a legal and equitable attack upon and objections to said claim, that this defendant has the right under said rules to amend his objections to conform to said proof and will exercise said right.

Wherefore, having fully answered, defendant prays that the temporary injunction heretofore granted herein be dissolved; that plaintiff's prayer for a permanent injunction be denied; that he have such other relief to which he may show himself entitled.

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Ardmore, Oklahoma

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Ardmore, Oklahoma
Attorneys for Defendant
Leonard J. Woodruff

[Exhibit A, order staying bankruptcy proceedings, case No. 7623, United States District Court, Eastern District of Oklahoma, In Re Leonard J. Woodruff, bankrupt, is identical with the order which appears at page 29.]

[Exhibit B, motion of Leonard Woodruff to set aside default and default judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with the motion which appears at page 220.]

[Exhibit C, objections of Leonard J. Woodruff to allowance of claim of M. E. Heiser, is identical with the objections which appear at page 77.]

[Exhibit A to Exhibit C, judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with the judgment which appears at page 10.]

[Exhibit B to Exhibit C, complaint for damages, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with the complaint which appears at page 45.]

[Exhibit C to Exhibit C, order on motion to vacate judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with the order which appears at page 70.]

[Exhibit D to Exhibit C, default judgment, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al., is identical with the default judgment which appears at page 73.]

[Exhibit E to Exhibit C, certificate of sale of personal property, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co., is identical with the certificate which appears at page 69.

Exhibit D.

In the District Court of the United States Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. No. 7623 In Bankruptcy.

Stipulation in Re the Taking of Depositions of Witnesses: Waiver of the Application for, Notice of, and Issuance of a Commission to Take Testimony.

It Is Hereby Stipulated by and between the undersigned party, *Marc* Feiler, representing various claimants, Hiram E. Casey, representing the bankrupt Woodruff, and Leonard J. Meyberg and Rupert B. Turnbull, representing the objecting creditor, M. E. Heiser, that the depositions may be taken of the following witnesses: of such witnesses as may be produced at 400 Lane Mortgage Building, Eighth and Spring Streets, Los Angeles, California, on the dates as hereinafter and in the manner designated and continuing from day to day as necessary until completed.

Notice in writing shall be given by the party desiring to produce witnesses, giving the date and the hour when said witnesses will be produced, and said notice will be served at least two days previous to the date the depositions are to be taken. Said notice shall state the name of the witness to be taken at the time fixed in the notice.

The parties hereto agree that all applications for the issuance of commission to take such testimony of such witnesses, the issuance of a commission, and all other and further notice of the time and place of the taking of said depositions be and hereby is waived.

The witnesses whose testimony is to be taken shall be such witnesses as are produced on behalf of the parties to this stipulation. The testimony of such witnesses when reduced to writing, signed, and returned into Court by the Notary before whom they are taken, may be used by either party or any party with the same full force and legal effect as if said witnesses were personally present and testifying herein.

All legal objections to the testimony may be reserved to

be made at the time of the use of such testimony except as objections to the form of the questions or the form of the answers, which objections shall be made at the time the testimony is taken and noted in the record, otherwise shall be deemed to be waived.

Dated: Oct. 1st 1940.

RUPERT B. TURNBULL,
400 Title Insurance Bldg.,
Los Angeles.
HIRAM E. CASEY,
Rowan Bldg., Los Angeles.
MARK S. FEILER,
1474 Glenville Drive;
Los Angeles.

Exhibit E.

Class of Service Desired
Night Letter x

Copy of Western Union Telegram.

Ardmore Okla December 5 1940

Honorable Rupert B Turnbull Attorney at Law 400 Title Insurance Building Los Angeles California

In the event we desire to take depositions in California within next two or three weeks will you waive formal notice securing of commissions and all formalities and agree to taking of depositions upon written stipulations setting forth time and place and names of witnesses. Will appreciate this courtesy upon the part of yourself and Mr. Meyberg. Please answer by wire our expense.

Regards
CHAMPION & FISCHL
W W POTTER

Paid Chg Louis A Fischl

Exhibit F.

Western Union

1940 Dec 6 PM 5 00

KMAE 97 / 6 Collect—Los Angeles Calif 6 219P
Champion and Fischl—Attorneys
Send Stipulation Make It Mutual—

TURNBULL

Jan. 28, 1941

Received copy of written answer.

T. G. Gibson Atty. for Pltf.

[Temporary Injunction.]

In the District Court of the United States for the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie May Woodruff, Ida Belle Woodruff, Howard Woodruff, Margaret Woodruff, Leonard J. Woodruff, Leonard J. Woodruff, Jr., John Doe, First Company, a corporation, Mary Black, Second Company, a corporation, Defendants. No. 426.

The verified complaint and petition of M. E. Heiser, the plaintiff herein, having been filed and application having been made by plaintiff for a restraining order and Preliminary Injunction and the court having on December 30th, 1940 fixed January 4th, 1941 at 9:00 a. m. as the time for the hearing of said application and notice in writing of the time and place of hearing having been given defendants on December 30, 1940 as shown by the notice and returns of service thereof on file, and the court having determined said notice sufficient, and the matter having come on for hearing at Muskogee, Oklahoma at the time and place fixed, T. G. Gibson, Esq., and Rupert B. Turnbull, Esq., appearing as attorneys on behalf of plaintiff and Thomas Champion, Esq., attorney appearing on behalf of defendant Leonard J. Woodruff, Sr., and W. W. Potter, Esq., attorney appearing on behalf of defendants Willie May Woodruff, Ida Belle Woodruff, Howard Woodruff, Margaret

Woodruff, Leonard J. Woodruff, Jr., and plaintiff having heretofore served and filed in support of his application, in addition to his complaint, the affidavits of Leonard V. Meyberg, M. E. Heiser, and Rupert B. Turnbull with their respective exhibits, and plaintiff's memorandum of points and authorities; and good cause appearing therefrom, and

It Is Ordered, that the defendants, Willie May Woodruff, Ida Belle Woodruff, Howard Woodruff, Margaret Woodruff, Leonard J. Woodruff, Leonard J. Woodruff, Jr., and each of them, be and are restrained and enjoined until further order of this court from further prosecuting or prosecuting at all their respective objections to the allowance of the claim of M. E. Heiser as a judgment creditor of Leonard J. Woodruff, bankrupt, No. 7623, now pending before the Hon. George F. Clark, as Referee in Bankruptcy of this court, to-wit:

From prosecuting the objections of the defendants herein and each of their said objections, and each of them, are restrained and enjoined until further order of this court, from re-litigating the matters and things involved and set forth in said objections insofar as said matters have been determined, decided and settled by the final judgments and decrees of:

First: The decision of the United States Circuit Court of Appeals for the Ninth Circuit, in the case of P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, bankrupt, and Leonard J. Woodruff, bankrupt, vs. M. E. Heiser, No. 9356.

Second: The final decision as rendered and entered in the District Court of the United States for the Southern District of California, in that action and proceeding entitled "M. E. Heiser, plaintiff, vs. Leonard J. Woodruff et al., defendants", No. 7256-C.

It Is Further Ordered, that until further order of this court, that the said defendants, Willie May Woodruff, Ida Belle Woodruff, Howard Woodruff, Margaret Woodruff, Leonard J. Woodruff, Jr., and Leonard J. Woodruff, Jr.,

and each of them are restrained and enjoined from proceeding in any manner at all to litigate by the prosecution of their present objections or any similar objections to the claim of M. E. Heiser as a judgment creditor of the estate of Leonard J. Woodruff, bankrupt, No. 7623, which bankruptcy proceeding, and which said claim of M. E. Heiser, and which objections are now pending before the Hon. George F. Clark, as Referee in Bankruptcy, one of the referees of this court for the Eastern District of Oklahoma.

This temporary restraining order is issued for the reason that it has been made to appear to this court by the verified complaint of the plaintiff on file herein, and the affidavits on file herein made in support of his application for temporary restraining order, and by reason of the documents attached to the plaintiff's complaint that plaintiff is entitled to his peace from vexatious harrassing and unnecessary litigation with respect to matters and things which have heretofore been settled and adjudicated by decision of the United States Circuit Court of Appeals for the Ninth Circuit in the case of P. M. Jackson, Trustee in Bankruptcy of the estate of Leonard J. Woodruff, and Leonard J. Woodruff vs. M. E. Heiser, and also which have been decided by the final judgment entered by the District Court of the United States for the Southern District of California in an action entitled "M. E. Heiser, plaintiff vs. Leonard J. Woodruff, et al., defendants", and that irreparable damage and injury will follow and is threatened unless the defendants and each of them, be so restrained and enjoined, for the reason that if the acts complained of by the plaintiff are done and performed by the defendants, plaintiff will lose, and there will be forever lost to him the injunctive relief to which he claims he is entitled in his complaint.

The Court has required, and the plaintiff has furnished and filed a bond as security for the payment of such costs or damages as may be incurred or suffered by any party who is found to have been unlawfully enjoined or restrained by this Order. Said bond is in the sum of $2500.00 and has been approved by this Court.

Dated at Muskogee, Oklahoma, this 6th day of January, 1941.

EUGENE RICE, U. S. District Judge.

Approved As To Form:
CHAMPION AND FISCHL, Attorneys for Leonard J. Woodruff.
W. W. POTTER, Attorney for Willie May Woodruff, Ida Belle Woodruff, Leonard J. Woodruff, Jr., Margaret Woodruff, Howard Woodruff.

Filed Jan. 6, 1941. W. V. McClure, Clerk, U. S. District Court.

Findings of Fact and Conclusions of Law.

In the District Court of the United States in and for the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie Mae Woodruff, et al., Defendants. No. 426—Civil.

On December 30, 1940, the plaintiff, M. E. Heiser, a non-resident of the State of Oklahoma, filed his complaint seeking injunctive relief against the defendants. The defendant, Leonard J. Woodruff, Jr., is a bankrupt, having been adjudicated a bankrupt in July, 1939. The other defendants named in this action are creditors of the bankrupt, Leonard J. Woodruff; at least they assert claims against the bankrupt estate. The plaintiff, Heiser, is the owner of a judgment obtained in the United States District Court for the Southern District of California wherein Heiser was plaintiff and Woodruff was defendant. The principal sum of the judgment is One Hundred Sixty Four Thousand ($164,000) Dollars, and said judgment with interest and costs amounts to Two Hundred Seventy Eight Thousand ($278,000) Dollars at the time of the institution of this action. The judgment which Heiser holds against Woodruff has become final. Prior to the filing of bankruptcy the defendant endeavored to have the same set aside upon his application filed in the United States District Court of California. He was unsuccessful and no appeal was taken. After the bankruptcy proceedings were begun in this court, the Trustee in Bankruptcy

went to California and endeavored to have this judgment set aside. He, too, was unsuccessful.

An appeal was taken to the Circuit Court of Appeals of the Ninth Circuit and by its decision, the Circuit Court of Appeals affirmed the District Court. After the judgment became final Heiser filed his claim in the bankruptcy court making claim for the sum of Two Hundred Seventy Eight Thousand ($278,000) Dollars, said claim being based upon said judgment. In the hearing before the Referee upon said claim the bankrupt and the other general creditors filed written objections to the allowance of the claim, and upon the hearing sought to introduce evidence attacking the validity of the judgment, and, as plaintiff alleges, attempted to relitigate the questions that he says were finally settled and adjudicated in the United States District Court for the Southern District of California. The Referee in Bankruptcy after hearing arguments finally concluded that the bankrupt and general creditors had a right to introduce this evidence, and that he had a right to inquire into said judgment. In order that the bankrupt and creditors might procure certain needed evidence, a continuance was granted to the twentieth day of January, 1941. It was prior to this date that the plaintiff filed his complaint seeking to enjoin the defendants in this case from proceeding further with their efforts before the Referee in Bankruptcy. Upon notice to the defendants, a hearing upon the granting of a temporary injunction was set for January 4, 1941. On said date plaintiff appeared by his attorney and the defendants appeared by their attorneys. As a result of this hearing the court on January 4 granted the plaintiff a temporary injunction conditioned upon the giving of a bond in the sum of Two Thousand Five Hundred ($2,500) Dollars with sureties to be approved by the court. The order of the court granting the temporary injunction contains this language in regard to a bond, "The court has required and the plaintiff has furnished and filed a bond as security for the payment of such costs or damages as may be incurred or suffered by any party who is found to be unlawfully injured or restrained by this order. Said bond is in the sum of $2,500 and has been approved by this court." The bond was approved and

the order was signed on the sixth day of January, 1941. Said cause was thereafter set for trial and a hearing upon the merits, evidence was introduced, the cause was argued to the court, and briefs submitted. Upon the trial of this cause upon its merits the defendants contended that if permitted to introduce evidence in the bankrupt court they could successfully show that the bankrupt was never indebted to the plaintiff in any sum whatever, that the judgment of the California court is void, that it was procured upon prejured testimony, that the bankrupt, Woodruff, had never been permitted to defend said cause upon the merits and that the claim should either be disallowed in whole or greatly reduced in amount.

Upon consideration of the law, this court came to the conclusion that the plaintiff herein had an adequate remedy at law, that is, by proceeding in bankruptcy and appealing or bringing the matter before the court by a bill of review from the action of the Referee in Bankruptcy; that this involved no more expense or litigation than the method pursued by this plaintiff in this injunction suit; that the action of the plaintiff herein in reality was an attempt to have a court of equity control the procedure of the bankruptcy court, and that a court of equity has no such power or jurisdiction, and this court denied injunctive relief to the plaintiff, dissolved the temporary injunction, and directed that the matter proceed in its orderly way in a bankrupt court, specifically reserving a decision upon the right of the bankrupt and the creditors to question in the bankruptcy court the validity of the judgment relied upon as a basis of the claim by the plaintiff. This judgment was accepted by the plaintiff. No appeal has been taken therefrom. The defendants by motion have asked the court to assess the daniages, and at the date set for this trial, to wit: August 18, 1941, the plaintiff appeared by his counsel, the surety on his bond, the United States Fidelity and Guaranty Company appeared by its counsel, and the defendants appeared by their counsel.

The bond that was executed by the plaintiff and filed and approved herein was the form of bond that is used and required to be filed under the state law in the District Courts in the State of Oklahoma. It contains the following pro-

vision. "Now, therefore, we, M. E. Heiser, as principal, and United States Fidelity & Guaranty Company, as surety, hereby undertake in the sum of Two Thousand Five Hundred ($2,500) Dollars that the plaintiff shall pay to the said defendant or to the party injured any damages he may sustain including reasonable attorney fees by reason of issue of said injunction if it should be finally decided that the said injunction ought not to have been granted."

The defendants are residents of the State of Oklahoma. The evidence which they desire to introduce in the hearing before the Referee in Bankruptcy pertaining to the judgment mentioned herein must in the main be secured in California. At the time the hearing for a temporary injunction was had herein the attorney for the defendants, who himself resides at Ardmore, Oklahoma, was in California for the purpose of taking the depositions desired for the hearing before the Referee in Bankruptcy. Preparations for the taking of such depositions had practically been completed. The granting of the temporary injunction herein caused the attorney for the defendants to abandon the taking of the depositions in California at that time whereupon he returned to the State of Oklahoma. At the time of the granting of the temporary injunction herein one of the chief considerations in determining the amount of the bond that should be required was the fact that the granting of the temporary injunction would stop the taking of said depositions and in the event that the temporary injunction should later be dissolved the defendants would be put to the expense of financing the taking of the depositions in California and that it would be necessary for their attorney to return to California for this purpose. A consideration of a reasonable attorneys fee for the defense of the injunction action was not considered by the court at that time, in fact the court's order did not require that the bond contain such a provision as that.

The evidence introduced at this present hearing is to the effect that the defendants have agreed to pay the attorney for his return to California to complete the taking of the depositions that would have been taken in January of this year but for the granting of the temporary injunction, the

sum of One Thousand ($1,000) Dollars in addition to the fee and expenses provided for the taking of the depositions upon the former trip. Evidence further discloses that the defendants have employed an attorney in San Francisco and paid him the sum of Five Hundred ($500) Dollars for the taking of depositions of witnesses in San Francisco. The attorney for the defendants has advanced for them the sum of Eighteen and 42/100 ($18.42) Dollars for the taking of depositions used upon the trial of this cause upon its merits. The evidence which was introduced upon this hearing and which is not contradicted is to the effect that this One Thousand ($1,000) Dollars and the Five Hundred ($500) Dollar items is an additional expense to which the defendants have been put by reason of the granting of the temporary injunction herein. It was for the purpose of protecting the defendants against this added expense that the bond in this case was required.

Conclusions of Law.

I.

Under the law of the State of Oklahoma one of the conditions of an injunction bond is for the payment of reasonable attorneys fees, §718 Oklahoma Statutes 1931, 12 O. S. A. §1392. Such a requirement is not contained in Rule 65C Federal Rules of Civil Procedure nor in the Act of Congress 28 U. S. C. A. 382. The fact that the plaintiff used the form of bond required under the state law and that it contains a provision for the payment of attorneys fees will not serve to enlarge the obligation of the plaintiffs beyond that required under the Federal law and the recital in said bond in regard to the payment of an attorneys fees may be treated as surplusage, 32 Corpus Juris, paragraph 525, page 318.

II.

The liability of the plaintiff and his surety on the bond given herein is controlled by Federal law and not by the laws of the State of Oklahoma, and under the Federal law attorneys fees for the defense of the injunction suit are not an item of damage covered by the bond required under the Federal law. Duke Power Co., et al. vs. Greenwood

County et al., 25 F. Supp. 419, Greenwood County et al. vs. Duke Power Co. et al., 107 F. (2) 484; Salvage Process Corp. et al. vs. Acme Tank Cleaning Corp., 104 F. (2) 105; Tullock vs. Mulvane, 184 U. S. 497.

III.

The court concludes that the defendants have been damaged as follows: One Thousand ($1,000) Dollars, the sum for which they have become legally liable to their attorneys for returning to California to complete the taking of depositions interrupted by the granting of the temporary injunction herein; Five Hundred ($500) Dollars, the amount paid the attorney in San Francisco for the taking of depositions; Eighteen and 42/100 ($18.42) Dollars, cost of depositions taken to be used on the trial of the injunction suit upon its merits; a total of One Thousand Five Hundred Eighteen and Forty Two/100 ($1,518.42) Dollars.

IV.

The Defendants are entitled to a judgment on the application filed herein against the plaintiff and the surety on his bond, The United States Fidelity & Guaranty Company, and each of them for the sum of One Thousand Five Hundred Eighteen and Forty Two/100 ($1,518.42) Dollars.

On the trial of this application and at the conclusion of the evidence the attorneys for the respective parties agreed that the court might upon filing his findings of fact and conclusions of law enter judgment without further notice to either of the parties. And in accordance therewith judgment is entered this day in favor of the defendants and against the plaintiff, M. E. Heiser, and United States Fidelity & Guaranty Co., and each of them in the sum of One Thousand Five Hundred Eighteen and Forty Two/100 ($1,518.42) Dollars and the costs of this action.

Dated this twentieth day of August, 1941.

EUGENE RICE, District Judge.

Judgment.

United States District Court for the Eastern District of Oklahoma.

M. E. Heiser, Plaintiff, vs. Willie Mae Woodruff, et al., Defendants. No. 426 Civil.

Filed Aug. 20, 1941. John H. Pugh, Clerk, U. S. District Court. By Tom McSpadden, Deputy Clerk.

On the 18th day of August, 1941, this matter came on for hearing at Muskogee, upon proper notice to all parties upon the application of the defendants on order of the court assessing the damages sustained by the defendants under the injunction bond, and for judgment against the sureties therefor; plaintiff appeared by his attorney of record, Rupert B. Turnbull, the defendants, Willie Mae Woodruff and Howard Woodruff, appeared in person and by their attorney, W. W. Potter, and the defendant, Leonard J. Woodruff, appeared by his attorney, Louis A. Fischl, and the court having heard the evidence and argument of counsel, and being fully advised in the premises, on this the 20th day of August, 1941, makes findings of fact herein, which findings of fact are made a part of this judgment, and in accordance therewith

It Is Ordered, Adjudged, and Decreed by the court that the defendants have and recover judgment on the injunction bond herein against the plaintiff, M. E. Heiser, and the surety, United States Fidelity & Guaranty Company, in the sum of $1518.42, together with interest thereon at the rate of 6% per annum from the date of the entry of this judgment.

Eugene Rice, Judge.

United States of America, Eastern District of Oklahoma, ss.

I, John H. Pugh, Clerk of the United States District Court in and for the Eastern District of Oklahoma, do hereby certify that the annexed and foregoing is a true and full copy of the original Complaint for *Injuctive* Relief and to prevent Multiplicity of Suits, Temporary Injunction, Separate Answer of the Defendant Leonard J.

Woodruff, and Findings of Fact and Conclusions of Law—Case No. 426—Civil—M. E. Heiser, Plaintiff, vs. Willie Mae Woodruff, et al., Defendants, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Muskogee, Oklahoma this 20th day of July, A. D. 1942.

JOHN H. PUGH, Clerk.
(Seal) By MARY KNIERIM, Deputy Clerk.

Certificate.

United States of America, Eastern District of Oklahoma, ss.

601 I, John H. Pugh, Clerk of the United States District Court in and for the Eastern District of Oklahoma, do hereby certify that the annexed and foregoing is a true and correct copy of the original pleadings and proceedings in Bankruptcy No. 7623; In the Matter of Leonard J. Woodruff, Bankrupt, as is called for in the designations of the contents of the record filed herein, and now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid court at Muskogee, Oklahoma; this 1st day of September, 1944.

JOHN H. PUGH, Clerk, U. S. District Court.
By RANDOLPH KIZZIRE, Deputy Clerk.
(Seal)

Filed September 5, 1944. Robert B. Cartwright, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit:

Order of Submission.

First Day, May Term, Monday, May 14th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

These causes came on to be heard, Rupert B. Turnbull, Esquire; and Leonard J. Meyberg, Esquire, appearing for M. E. Heiser, appellant in case No. 3043 and appellee in cases Nos. 3052 and 3053; H. A. Ledbetter, Esquire, appearing for appellees in case No. 3043 and appellant in case No. 3053; Louis A. Fischl, Esquire, and Thomas W. Champion, Esquire, appearing for appellants in case No. 3052.

On motion, appellants in case No. 3052 were granted leave to file twenty printed copies of additional authorities instanter, which was accordingly done.

On motion, M. E. Heiser was granted leave to file four typewritten copies of a supplemental brief within ten days from this day.

Thereupon, these causes were argued by counsel and were submitted to the court.

Opinion.

[August 11, 1945.]

Louis A. Fischl and Thos. W. Champion (H. A. Ledbetter was with them on the brief) for Appellants.

Leonard J. Meyberg and Rupert B. Turnbull (T. G. Gibson was with them on the brief) for Appellee.

Before Phillips, Bratton and Huxman, Circuit Judges.

Bratton, Circuit Judge:

This is an appeal from a judgment allowing a claim in bankruptcy. A brief statement of the background may be helpful in understanding the manner in which the questions for determination arise. In 1935, M. E. Heiser sued Leonard J. Woodruff and others in the United States Court for

Southern California. It was alleged in the complaint that plaintiff had been and was engaged in the business of mining and marketing raw gems, particularly emeralds, sapphires, and zircons; that in 1928, he arrived in the United States from Australia on a business trip to find and establish a regular and ready market for raw gems, mined under his control and management in Australia; that he then owned and had in California certain sapphires, opals, zircons, and jade; that such gems were reasonably worth $164,000; and that the defendants cheated and defrauded him out of them. The defendant Woodruff failed to answer or otherwise plead in the case; plaintiff submitted evidence; and on March 20, 1939, the court entered judgment against such defendant for $164,000, together with accrued interest, aggregating $277,036.71. The defendant filed a motion to set aside the judgment. The motion was denied. The parties stipulated that the court might hear evidence respecting the value of the property of plaintiff for which damages were awarded in the judgment; and that should the court find the value to be less than the amount of the judgment, the judgment should be modified and reduced to the amount which represented the value of the property. On June 29, 1939, after hearing evidence, the court found the value of the property to be the amount fixed in the judgment.

Woodruff filed in the United States Court, for Eastern Oklahoma his voluntary petition in bankruptcy; and, on July 5, 1939, an order of adjudication was entered. Heiser filed in the proceeding an unsecured claim, based upon the judgment. The referee entered an order authorizing any creditor of the estate to contest any claim filed. Willie Mae Woodruff, wife of the bankrupt, and Ida Belle Woodruff, as creditors, filed objections to the claim of Heiser; and the bankrupt also filed objections. The referee authorized the trustee to employ an attorney in California and take such legal steps as seemed necessary and proper to vacate the judgment. The trustee and Woodruff filed in the cause in California a joint motion to vacate the judgment, vacate the default, vacate the orders entered after the rendition of the judgment, permit Woodruff to answer, and permit the trustee to intervene. The court denied the motion, Woodruff and the trustee appealed, and the order was affirmed. Jackson v. Heiser, 111 F. (2d) 310. The

referee later heard evidence and disallowed the claim in toto; on review, the district court entered judgment allowing it in full; and by order, the court authorized the objecting creditors to appeal from the judgment.

The action of the district court in allowing the claim was predicated upon the conclusion that the proceedings in California constituted *res judicata* of the matters set up in the objections. Section 2 of the Bankruptcy Act, as amended, 52 Stat. 840, 11 U.S.C.A. §11, provides among other things that the district courts sitting in bankruptcy shall be vested with such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in proceedings under the act; and that they may make such orders and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of the act. "A court of bankruptcy is essentially a court of equity, and its proceedings are inherently proceedings in equity. It exercises equitable powers of wide sweep in relation to problems arising out of the administration of bankrupt estates; and, with appropriate regard for rights acquired under the law of the state, its equitable powers may be exerted in full vigor with respect to the allowance of claims, the rejection of claims, or the subordination of claims to other claims. Pepper v. Litton, 308 U.S. 295; Prudence Realization Corp. v. Geist, 316 U.S. 89.

A bankruptcy court in which an estate is being administered has full power to inquire into the validity of an alleged debt of the bankrupt upon which a claim against the estate is based. And the merger of the original debt or obligation into judgment does not take away the power of the bankruptcy court to inquire into its provability. Notwithstanding the change in form of the liability from a simple contract debt, or an unliquidated claim, into a judgment of a court of record, it remains the same debt and the bankruptcy court may look behind the judgment to determine the essential nature of the liability for purposes of proof and allowance or rejection. Pepper v. Litton, supra. And in the absence of a well grounded plea of *res judicata*, the trustee in bankruptcy may collaterally attack a judgment which is presented as a claim against the estate on the ground that it was founded upon no real liability of the bankrupt. Pepper v. Litton, supra.

The claim of Heiser was contested on the grounds that no personal service of summons was had upon the defendant Woodruff in the action in California; that the complaint filed in the action failed to state a cause of action under the laws of California; that the complaint showed on its face that if plaintiff ever had any cause of action, it was barred by the statutes of limitation of California; and that the judgment was void for the reason that the complaint undertook to state three separate and distinct causes of action and the judgment failed to specify the cause upon which it was rendered. By the motion to vacate the judgment, set aside the default, vacate the orders entered after the rendition of the judgment, and permit the interposition of a defense to the action, the trustee and the defendant Woodruff expressly attacked the judgment on these grounds, and others. The trustee was acting for all of the creditors of the estate of the bankrupt, and the determination of such issues adverse to him constitutes *res judicata* here to that extent and protects the judgment against collateral attack on those grounds. Pepper v. Litton, supra.

But the grounds of contest did not end there. It was specifically charged in the objections that at the time of the filing of the suit in California and at the time of the rendition of the judgment, Woodruff was not indebted to Heiser in any amount; that the material allegations contained in the complaint were untrue; that the judgment was obtained through the use of perjured testimony given by Heiser; and that he thus committed a fraud upon the court and the parties. The record fails to indicate that these matters were placed before the court in California, either in the motion of the defendant Woodruff to vacate the judgment, by the motion of the trustee and the defendant Woodruff to set aside the judgment, or otherwise. Therefore the judgment did not constitute *res judicata* in respect of these issues, and the claim was open to attack on these grounds. Pepper v. Litton, supra. In reaching this conclusion we are mindful of the statement in Jackson v. Heiser, supra, that the charge of fraud in obtaining the judgment was denied, not proved, and apparently abandoned. But the nature of the fraud referred to does not appear. And the record before us does not contain any showing that the contention that the material allegations in

the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser, and that a fraud thus was committed on the court and the parties was ever submitted to the court in California by motion to vacate the judgment or otherwise, or that such issues were ever expressly adjudicated by that court in favor of Heiser.

The evidence concerning the claim was extensive and presented issues of fact. But the court did not make any formal findings of fact or conclusions of law. It was the duty of the court to make findings and conclusions, in accordance with Rule of Civil Procedure 52(a). And where the issues cannot be decided satisfactorily on appeal without findings of fact by the trial court, the judgment may be vacated and the cause remanded in order that findings of fact may be made. Mayo v. Lakeland Highlands Canning Co., 309 U.S. 310; Kelley v. Everglades Drainage District, 319 U.S. 415.

Where the trial court embodied in its written opinion specific findings on the material issues of fact and set out conclusions on the important questions of law involved, the cause should not be remanded for formal findings and conclusions. Carter Coal Co. v. Litz, 140 F. (2d) 934. The court rendered an opinion in writing, but it does not present the findings or conclusions of the court upon the issues open to inquiry concerning the debt or obligation underlying the judgment. And the issues can not be satisfactorily decided on appeal without findings of fact.

The provision in the judgment allowing the claim of Heiser is vacated, and the cause is remanded for appropriate action in conformity with this opinion.

Huxman, Circuit Judge, Dissenting:

I think the judgment of the lower court is right and should be affirmed on the ground that the issue presented is res judicata.

It is of course well-settled that a bankruptcy court is not precluded from inquiring into the validity of a claim by the mere fact that it has been reduced to judgment, but when

the validity of the judgment has been adjudicated since its entry, no good reason appears why a court of bankruptcy under its equitable powers should again relitigate the same issue.

The gist of the fraud with which Heiser was charged and which was made the basis of the attempt to defeat his claim in the bankruptcy court was that he panned off a bunch of worthless stones as jewels, and, by the use of perjured and false testimony as to their value obtained a default judgment in the California court which now is the basis of his claim. This is the only fraud with which he has ever been charged. It is the basis of every effort of the Woodruffs or of the trustee to resist his claim.

In my view, this question of fraud in the procurement of the default judgment has been adjudicated twice since its entry. It was first adjudicated at the hearing on Woodruff's motion to set aside the default judgment, which was filed nine days after the entry thereof. While the record is not as clear on this point as might be desired, the charge must have been made at that time that the judgment was fraudulent because the gems had no value. This must have been so because while the court refused to set the default aside, it was stipulated in open court that the court should hold a hearing as to the value of the gems, and that the amount of the judgment should be modified if required in accordance with the evidence produced at such hearing. Pursuant to this stipulation a lengthy hearing was had in which both Woodruff and Heiser appeared and participated. At the end of that adversary hearing, the court found the value of the property to be the amount of the judgment, and accordingly refused to modify the judgment. So it appears that Woodruff got everything he would have gotten had his motion been sustained and had he been permitted to answer and defend.

Immediately after the court ruled against Woodruff, he went into bankruptcy, and this proceeding resulted. The order of the court refusing to modify the amount of the judgment was entered June 29, 1939. On July 5, 1939, Woodruff was adjudged a bankrupt on his voluntary petition in the United States District Court for the Eastern District of Oklahoma. Jackson was appointed trustee on July 20,

1939. On September 11, 1939, pursuant to authority theretofore obtained, he filed a notice of motion to vacate the default judgment in the United States District Court of California where the default judgment had been obtained. He also filed an affidavit of merit in support of his motion. The notice set forth many grounds in support thereof. Among others, it stated that the motion "will be made upon the ground that a fraud was practiced upon the above entitled court with respect to the entry of said judgment." The affidavit of merit by the trustee in support of the motion to set the judgment aside, among others, recited upon information and belief that the "judgment . . is based upon fictitious values and was obtained by methods which amounted to a constructive fraud. . and in the event said judgment is set aside the alleged claim of said M. E. Heiser can be defeated in whole at a trial on the merits."

So here we have a direct attack upon the validity of the judgment on account of fraud in its procurement by the trustee himself. He failed in this attack in the California District Court. Why should he be permitted to raise the same question again a second time in the United States District Court of Oklahoma?

I cannot agree with the statement in the majority opinion that the issue of fraud in the procurement of the original judgment by the use of false and fraudulent testimony as to the value of the gems was not placed before the California court by the trustee's motion and supporting affidavit. The notice of motion alleged fraud and the affidavit stated that the judgment was based upon fictitious values and was obtained by methods that amounted to a constructive fraud. This could mean only one thing, namely, that the testimony as to the value of the gems was fictitious, false and fraudulent. Heiser's affidavits denied that any fraud was practised upon the court. This presented a clear-cut issue of fraud in the procurement of the judgment. It was the duty of the trustee to substantiate the charge. This he failed to do.

Nor is it sufficient to say that the trustee was denied the opportunity to introduce oral testimony to support the charge. The record does not reveal that any oral testimony was offered or that the trustee was denied the right to in-

troduce any testimony. But if he was denied this right, he should have raised the question when he appealed the case to the Circuit Court of Appeals.

Apparently the trustee abandoned the charge of fraud both in the California District Court and in the Circuit Court of Appeals. See Jackson v. Heiser, 111 F. 2d 310. But this he will not be permitted to do. One of the issues presented by both Woodruff and the trustee in their motions to vacate the judgment was fraud in the use of false and fictitious testimony relating to the value of the stones. The issue as tendered was broad enough to prove every kind and nature of fraud. It is incumbent upon one attacking the validity of a judgment to present every available ground of which he has knowledge. He may not present his claim by piece meal. Grubb v. Public Utility Com., 281 U. S. 470, 478, 479. It is not claimed that the trustee was without knowledge of the claimed facts which would have enabled him to present the issue. He had the active help and assistance of Woodruff throughout in his efforts to vacate the judgment. Woodruff filed a motion with him to vacate this judgment.

The Circuit Court of Appeals of the Ninth Circuit treated the motion of the trustee as an independent action or proceeding attacking the judgment. The trustee tendered the issue of fraud in this proceeding and was defeated. He appealed, and abandoned the charge of fraud. A judgment is res judicata not only as to those matters which were decided, but also as to those matters which could have been presented for decision. Chicot Co. Dist. v. Bank, 308 U.S. 371, 378. Two attacks have already been made upon this judgment since its entry on the ground there was no value to these stones and that the testimony establishing the value was fraudulent, fictitious and perjured. I do not think that either the Woodruffs or the trustee is entitled to try the issue a third time.

Judgment.

Fiftieth Day, May Term, Saturday, August 11th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Esatern District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the provision in the judgment of the said district court in this cause allowing the claim of Heiser be and the same is hereby vacated; that this cause be and the same is hereby remanded for further action in conformity with the majority opinion of this court; and that Willie Mae Woodruff, Howard L. Woodruff, Margueritte Woodruff, Leonard Woodruff, Jr., Ida Belle Woodruff, and Leonard J. Woodruff, appellants, have and recover of and from M. E. Heiser, appellee, their costs herein and have execution therefor.

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IN THE

United States Circuit Court of Appeals

FOR THE TENTH CIRCUIT.

No. 3052.

WILLIE MAE WOODRUFF; HOWARD L. WOODRUFF; MARGUERITE WOODRUFF; LEONARD WOODRUFF, JR.; IDA BELL WOODRUFF and LEONARD J. WOODRUFF,
Appellants,

vs.

M. E. HEISER,
Appellee.

PETITION FOR REHEARING.

I.

The Alleged Frauds and the Judicial Determinations Thereof.

There are two frauds involved in these proceedings. The first fraud is that alleged by Appellee M. E. Heiser, as plaintiff, in his California complaint, which is the fraud of Woodruff, the bankrupt, resulting in the California judgment by the United States District Court at Los Angeles, rendered, entered, docketed, endorsed and filed March 20, 1930, in that court. [Tr. Vol. I, p. 10.] The second fraud is the alleged fraud of M. E. Heiser in procuring the said judgment March 20, 1939, against Leonard J. Woodruff. It is the subject of this latter alleged fraud of M. E. Heiser in procuring that judgment of March 20, 1939, that has been in issue since first

tendered by the proceedings filed by Leonard J. Woodruff nine days after the entry of such judgment resulting in judgment against Woodruff, continuing on into the prolonged trial before the same court on the issue of value, also determined against Woodruff, and continuing on in the proceeding had by P. M. Jackson, trustee, in behalf of the Woodruff family as creditors in bankruptcy and Leonard J. Woodruff, the bankrupt, before the same trial court at Los Angeles, resulting again in judgment against P. M. Jackson, trustee, for the creditors and the bankrupt, and on again into their appeal from that judgment to the U. S. Circuit Court of Appeals for the Ninth Circuit, which judgment was by that court affirmed by their unanimous opinion. (111 F. (2d) 310.) And now again we still are confronted with the very same issue, alleged fraud of Heiser.

While the majority opinion in the case at bar holds that the "trustee was acting for all the creditors of the estate of the bankrupt and the determination of such issues adverse to him constitutes *res adjudicata* here to that extent and protects judgment against collateral attacks on those grounds," it also holds that in the contest before the referee in addition to the grounds upon which the trustee's proceedings were based, "It was specifically charged in the objections that at the time of the filing of the suit in California and at the time of the rendition of the judgment Woodruff was not indebted to Heiser in any amount; that the material allegations contained in the complaint were untrue; that the judgment was obtained through the use of perjured testimony given by Heiser; and that he thus committed a fraud upon the court and the parties." The objections referred to are again the same contentions by the same Woodruff family.

We submit that each and all of the foregoing charges were fully covered by the grounds of the contest by P. M. Jackson, trustee, before the court at Los Angeles and form a part of the record on the appeal by the trustee, which resulted in a determination adverse to him. [Obj. Exh. DD.] It would appear to this petitioner that there may not have been sufficiently called to the attention of this Honorable Court, and therefore may not have been adequately examined by it, Objector's Exhibit 8, referred to on page 339 of Volume I of the transcript before it, and also described as Objector's Exhibit DD, referred to at page 1013 of Volume II of said transcript. It is referred to again in the referee's certificate on review as Objector's Exhibit DD at the bottom of page 150 of Volume I. Reading from the referee's certificate on review at the bottom of page 150, Volume I:

> "Objector's Exhibit DD, 7-27-42, is a certified transcript of record upon appeal from the District Court of the United States for the Southern District of California, Central Division, in No. 9356, United States Circuit Court of Appeals for the Ninth Circuit, P. M. Jackson, trustee in bankruptcy of the estate of Leonard Woodruff, a bankrupt, and Leonard Woodruff, Appellants, vs. M. E. Heiser, Appellee. This transcript of record (Exhibit DD) apparently is a complete record of the proceedings in which Heiser obtained the default judgment, and also the proceeding in connection with the motion of P. M. Jackson, trustee in bankruptcy, and Leonard Woodruff."

Objector's Exhibit DD, also known as Objector's Exhibit No. 8, is therefore a part of the record before this Honorable Court and clearly shows the issues raised by

the various aforementioned proceedings before the trial court at Los Angeles by P. M. Jackson, trustee, on behalf of the creditors which are the Woodruff family and Leonard J. Woodruff, all of which proceedings, pleadings, and papers are made a part of the proceedings initiated by the trustee in the Los Angeles court, and so declared in his notice of motion, which appears at page 277 of Exhibit DD.

The notice of motion which also appears in the transcript of record herein at page 275 states upon what specific papers it will be made, which include "the affidavit of merit of Leonard J. Woodruff [p. 159]; the affidavit of P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff [p. 272]; upon the verified answer of Leonard J. Woodruff now in the files of the above entitled proceeding [p. 132]; upon the proposed *verified answer* of P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff [p. 242]; the affidavit of Francis B. Cobb, attorney for said P. M. Jackson; the *affidavit of merit* of Leonard J. Woodruff filed in the above entitled case [p. 160]; and the affidavit of Leonard J. Woodruff answering plaintiff's affidavit in opposition to Leonard J. Woodruff's motion as one of the defendants [p. 192]; etc. The foregoing page numbers in brackets are to pages of the *transcript in case No. 9356, Exhibit DD*, before this court as an exhibit.

The motion of the trustee further states that it "will be made upon the files and records of the proceedings herein, and upon the affidavits above set forth, and upon the law and points and authorities submitted herewith." [Obj. Exh. DD, p. 272.]

Therefore the record of proceedings before the Los Angeles court up to that time, which are included in the

certified transcript, Exhibit DD, created the issues before the court in the trustee's proceedings. That motion of the trustee also states, as item (c) thereof: "That the complaint does not show title in M. E. Heiser as a judgment and execution sale alleged in the complaint have not been set aside or attacked." And in (b) "That the complaint shows that the title to said merchandise passed to the Golden State Gem Company, a Nevada corporation.", and that "said motion will be made upon the ground that a *fraud* was practiced upon the above entitled court with respect to the entry of the said judgment." The motion goes on to say that it "will be made upon the further ground that Leonard J. Woodruff and P. M. Jackson, trustee in bankruptcy of the estate of Leonard J. Woodruff, have a good and sufficient defense to plaintiff's alleged causes of action, and that they have been prevented from presenting said defense upon any trial of the merits by reason of *fraud*, accident, surprise and excusable neglect, as is more particularly shown by the affidavits herein above mentioned and herein filed in the above entitled proceedings."

We must then look to the affidavits and proposed answers which specifically allege the *frauds* put in issue. We submit, however, that under these proceedings the creditors, through the trustee, could have set up any and every *fraud* that they desired to specifically charge, and that they did so by the affidavits and proposed answers disclosed in the proceedings in the transcript, Objector's Exhibit DD.

At the end of the opinion of the Circuit Court of Appeals in the Ninth Circuit case [Tr. Vol. I, p. 294], it states: "As a further (and final) ground of their motion, appellants stated that they, Jackson and Woodruff, had a good defense to the action but were prevented from presenting it by reason of *fraud*," etc. "As to Woodruff the court apparently disbelieved the statement and disbelieved the evidence, if any, tending to support it." Can it therefore be said in the face of this Circuit Court unanimous opinion and these proceedings that the issue "that the judgment was obtained by *fraud*" was not a claimed ground of the motion? The opinion further recites that because of such issue before the trial court (the foregoing *fraud* issue) such proceeding instituted by Jackson, trustee, and Woodruff, was in effect an independent action or proceeding and therefore appealable as a final decision. Yet the majority opinion of this court holds in effect that Jackson, trustee, and Woodruff did not charge at the Los Angeles trial court that the judgment of March 20, 1939, was obtained by *fraud* or in effect that such charge was made and that the Woodruff family as alleged creditors withheld or were entitled to withhold certain alleged frauds to be resurrected and contested before the referee in this litigation on *ad infinitum*. Even if the specific charges were not identical could the objectors through the trustee set up fraud generally in an independent action, tender such issues which were denied by Heiser, and determined against the trustee, then contend before the referee the issue of fraud was abandoned

or that they have another fraud they wanted to reserve for the referee's decision. This is precisely the effect of the present situation disclosed by the majority opinion. We submit, even under the facts set up in this opinion, the failure of the trustee to prove the issue of fraud tendered by him or his abandonment thereof in the proceedings at Los Angeles or in his appeal should clearly add finis to this issue.

The affidavit of P. M. Jackson, trustee, in support of his motion to vacate, etc., filed in his proceedings at Los Angeles, appears on page 272 of Exhibit DD, and also appears in the transcript in the present case in Volume I, pages 278 to 280. In this affidavit the trustee says: "Affiant avers that the other creditors have no right or privilege of defending or intervening with respect to said judgment, which judgment affiant is informed and believes *is based upon fictitious values and was obtained by methods which amount to a constructive fraud upon the other creditors*, and your affiant as representative of said creditors and in the event said judgment is set aside, the alleged claim of M. E. Heiser can be defeated in whole at a trial on the merits." And the said trustee's affidavit before the trial court at Los Angeles, says further: "That plaintiff and his attorney knowing said facts, *have attempted to practice and did practice fraud upon the above entitled court and upon Leonard J. Woodruff in procuring the entry of said judgment* and said default judgment." And then he states that he "believes and has been advised by his attorneys above named that the grounds set forth

in the said instruments exist and that the same possess merit, and that if granted the claim of M. E. Heiser as set forth in said complaint, and each count thereof, can be defeated in whole, and that the property of this estate can be released from the lien of said judgment" etc.

In the amendments to the objections of Willie Mae Woodruff to the claim of M. E. Heiser [Tr. Vol. I, p. 122] the objector sets up that the claimant was guilty of fraud on the Court and of perjury in obtaining said judgment in that he alleged in his complaint, and *apparently* testified under oath in the District Court of the United States in and for the District of California on the *20th day of March, 1939*, that in June and July of 1928 he was possessed of 1200 ounces of blue sapphire rough, etc., which property he alleged was of a value in excess of $100,000.00 and that he deposited said gems in the United States National Bank at Eighth and Spring Streets, Los Angeles, California, when in truth and in fact said M. E. Heiser was not possessed of said gems above described and did not deposit the same in said bank, and she goes on to state that she is prepared to prove that he did not possess the gems at said time and did not deposit the gems of like quantity or quality in said bank as testified to by him in order to obtain the said judgment. There is no evidence before the Referee of any testimony of M. E. Heiser prior to the rendition of the Judgment March 20, 1939. Then said amendment sets forth the so-called $30,000.00 claim filed in the matter of the bankruptcy of the Golden State Gem Company, which is the same allegation

as contained in the proceedings before the Los Angeles Court as we have shown from objects Exhibit DD.

The protest and objections of the bankrupt to the Heiser claim [Tr. Vol. 1, p. 77] and the objections of Willie Mae Woodruff [Tr. Vol. 1, p. 41] and the amendments to her objections [Tr. Vol. 1, p. 122] include all of the charges sought to be placed in contest before the referee on the Heiser claim. The answer of Heiser to these objections [Tr. Vol. 1, pp. 86 and 99] clearly set forth in detail the trial of these same issues in the California courts in behalf of the same creditors. We have heretofore dealt with the amendments to the objections which are only an allegation of perjury in the obtaining of said judgment in what Heiser "apparently" testified to on March 20, 1939, and his filing of his claim in the matter of the bankruptcy of the Golden State Gem Co. (a Woodruff-Smith Company) for $30,000.00 and the Loller matter, all of which was expressly before the California court by affidavits in the same verbiage filed in behalf of Woodruff in his first motion to vacate and in behalf of the trustee and Woodruff in the second motion in affidavits and the proposed answers. All of these instruments before the California court containing these same allegations appear in Exhibit DD, transcript of the record before that court, on the following pages: Fitzpatrick affidavit, Exhibit DD, page 126; Jackson affidavit, Exhibit DD, p. 272; Leonard J. Woodruff affidavit, Exhibit DD, page 159, and another at page 192 and another at page 160; answer of Leonard Woodruff, Exhibit DD, page 132; answer of P. M. Jackson, Exhibit DD, page 248.

And denial of these charges by M. E. Heiser in the same Exhibit DD, pages 76, 80, 169, 206, 282, 281.

For answer to these charges of fraud placed in issue by P. M. Jackson, trustee, and the bankrupt before the Los Angeles court, M. E. Heiser, as respondent in said proceedings, denied each allegation thereof. At page 281 of Exhibit DD appears a denial of fraud under oath of Leonard J. Meyberg, an attorney of record for M. E. Heiser in said proceedings. We quote therefrom:

> "Denies that plaintiff and/or his attorney and/or this affiant have attempted to practice and/or did practice fraud upon the above entitled court and/or upon Leonard J. Woodruff in procuring the entry of said judgment and said default judgment herein, or otherwise, or at all. Denies that any fraud whatever has been practiced upon this court by affiant as attorney for plaintiff, or otherwise, or at all, or by plaintiff."

M. E. Heiser categorically denied all of the charges of fraud and at the close of one of his counter-affidavits in the trustee's proceedings at Los Angeles he says:

> "This affiant, plaintiff herein, denies that he and/or his attorney have attempted to practice and/or did practice fraud upon the above entitled court and/or upon the said Leonard J. Woodruff in procuring the entry of the said judgment and said default judgment, or as defendant Leonard Woodruff or the alleged trustee Jackson alleges, or otherwise, or at all; denies that any fraud has been committed upon the above entitled Court by plaintiff or his attorney."

II.

Intrinsic and Extrinsic Fraud.

Only Where the Fraud Alleged Was Extrinsic or Collateral to the Matter Which Was Tried and Determined by a Court in His Judgment or Decree Can Be Used to Collaterally Attack It; Intrinsic Fraud Is Insufficient to Warrant Setting Aside the Judgment or Orders Under Attack.

In Equitable relief cases the Supreme Court of California in a long line of decisions has held firmly to this rule. (91 Cal 129; 18 Cal. (2d) 584; 19 Cal. (2d) 83; 20 Cal. (2d) 397; etc.) In *Horton v. Horton*, 18 Cal. (2d) at 584, the Supreme Court says: "The rule is well settled in this state that mere false allegations by the plaintiff, in her pleadings do not constitute such fraud as to justify equitable interference since the truth or falsity of the matters alleged is conclusively determined by the judgment, in the absence of some other ground for relief." The Supreme Court then quotes from the *Hanley* case, 114 Cal. 690: "It is settled beyond controversy that a decree will not be vacated merely because it was obtained by forged instruments or perjured testimony. In the *Horton* case at p. 585, the Court says: that the allegations in the present complaint decrease the intrinsic fraud going into the merits of the first action which the plaintiff should have exposed in the original proceeding. Instead he permitted a default to be taken against him and so admitted the truth of the material facts averred in the plaintiff's pleading. This decision goes on to quote from *Harvey v. Griffith*, 133 Cal. App. 17. 22 and 23: "It is immaterial that the judgment which is assailed was procured by default. The defendants in that action had an opportunity to appear and protect their interest. They deliberately

waived the right to their day in court by failing to appear and answer the complaint. A default judgment is an estoppel as to all issues necessarily litigated therein and determined thereby, exactly like any other judgment, provided the court acquired jurisdiction of the parties and subject matter involved in the suit. (Freeman on Judgments, 5th Ed. 2690, Sec. 1296.)" The case then holds "since the procuring of a judgment by mere intrinsic fraud will not justify the court in setting it aside, it is plain that the defendant has failed to state on this ground a cause of action for equitable interposition."

In this *Horton* case, 18 Cal. (2d) p. 584, it appears that the defendant filed an action in equity to set aside the decree of the court entered in an independent action between the parties. The court cites the following: "In the leading opinion of *U. S. v. Throckmorton*, 98 U. S. 61, 66, 25 L. Ed. 93, the court in an extended discussion of the rationale of this almost universally accepted rule based upon the distinguishing features of these two types of fraud, concluded that equitable aid will be granted where it appears that "by some fraud *practiced directly upon the party seeking relief* against the judgment or decree that party has been prevented from presenting *all* of his case to the court." The opinion then states that thus the question to be decided is whether the defendant has stated a case of extrinsic rather than intrinsic fraud. At p. 584: "An examination of the authorities as to what fraud will warrant the aid of equity discloses that only upon proof of *extrinsic* and *collateral* fraud can a plaintiff secure equitable relief from a judgment. A showing of fraud practiced at the hearing of the original action will not suffice. This is characterized as *intrinsic* fraud and since there must be an end to litigation and such fraud was a

part of the case presented to the former suit, equity will not reopen the matter." (*Pico v. Cohn*, 91 Cal. 129, 133; 25 Pac. 970; 27 Pac. 537; Am. St. Rep. 159; 13 L. R. A. 336.) It was contended by the defendant in the *Horton* case that the judgment obtained by the plaintiff is void because obtained by fraud and misrepresentation practiced by the plaintiff therein upon the court. That plaintiff was the defendant in the equity action before the Supreme Court on appeal.

In *Hammell v. Britton*, 19 Cal. (2d) at p. 72, the Supreme Court considers the sufficiency of a complaint in an action for equitable relief from a judgment of a court of another state, and the court holds: "A party is not entitled to equitable relief from a judgment on grounds that would have been a defense to the original action, in an absence of a showing of some appropriate equitable excuse for not having made the defense or for having been unsuccessful if such defense was made." "In an action for equitable relief based on extrinsic fraud in obtaining a judgment, the facts constituting the fraud must be pleaded with particularity and specifically. Mere allegations that a judgment of a court of a sister state was obtained by fraud and collusion are insufficient where there are no allegations of the facts constituting a fraud." The fraud sufficient to justify equitable relief from a judgment must be extrinsic or collateral to justify the questions examined or determined. False or perjured testimony is intrinsic fraud against which a defense may be made at the trial (*Eisenmayer v. Thompson*, 180 Cal. 538, 182 Pac. 308; *Watson v. Dillon*, 6 Cal. (2d) 33; *LaSalle v. [illegible]*, 220 Cal. 739, 32 Pac. (2d) 612; *Sanborn v. [illegible] Products Co.*, 205 Cal. 207, 270 Pac. 360; *[illegible] Broadway St. Bank*, 219 Cal. 593, 28 Pac. (2d) 344, 345;

Cal. Jur. 14.) And in the *Hammell v. Britton* case, 19 Cal. (2d) at 582, the Supreme Court says: "But even more significant is the fact that there is not a single allegation in the amended complaint that establishes that plaintiff was prevented by fraud from making any defense available to him in the California case."

We submit that it is most significant in the present case that there is not a single allegation in any of the objections of any of the creditors which have created the contest here and form the issues before the referee, which establishes that P. M. Jackson, Trustee, in behalf of the creditors or the bankrupt Woodruff "was prevented by fraud from making any defense available to him in the California action."

All of the foregoing cases are cited in an opinion rendered March, 1944, in the case of *Rogers v. Mulkey*, 63 Cal. App. (2d) 575, following the leading case of *U. S. v. Throckmorton*, 98 U. S. 61, 25 L. Ed. 93, holding that fraud or mistake is extrinsic when it deprives the unsuccessful party of an opportunity to present his case to the court or if an unsuccessful party to an action has been kept in ignorance thereof or has been prevented from fully participating therein. We submit that none of the issues in the contest before the referee approved by the majority opinion "that the material allegations in the complaint were knowingly false" and "that the judgment (March 20, 1939) was secured through the use of perjured testimony given by Heiser" include any extrinsic fraud or any assertion thereof, whether measured by the foregoing cases or otherwise, and that intrinsic fraud has no reference to the underlying claim in the circumstances of the case at bar, but if it has then the judgment of the court at Los Angeles being final against the trustee and

the bankrupt subsequent to the date of adjudication, we have a clear case where the bankrupt, himself, and the present objecting creditors through the referee have instituted the attack in the California court; they have not been prevented from full participation therein, or if any claim was made that they were prevented therefrom they did not raise such qustion in their appeal and are concluded thereby from so doing before the referee.

It is conclusive, therefore, by the judgment of the Ninth Circuit Court against these creditors and the bankrupt that they have not been prevented from full participation in our proceeding in California, they have had an opportunity to present their case in court and to protect themselves from any alleged fraud attempted—or practiced—by Heiser all as charged, denied and not proved in their proceedings through the trustee at Los Angeles. These cases all hold, as in *Rogers v. Mulkey, supra*, and the Federal *Throckmorton* case that intrinsic fraud even though the unsuccessful party does not avail himself of the opportunity to assert the fraud, he having had an opportunity to protect his interest, he cannot attack the judgment once the time has elapsed for appeal or other direct attack. Surely this rule is too well established in equity proceedings under Federal procedure and in California and elsewhere to be subject to doubt. The bankruptcy proceedings being proceedings in equity surely are governed by this accepted equity rule with respect to intrinsic and extrinsic fraud and the effect thereof on the underlying claim after a contest in equity by the trustee in behalf of these same creditors and the bankrupt himself who thereafter have created the subsequent contest before the referee, and after the previous proceedings have become final against them in California.

In the *Throckmorton* case, 98 U. S. 61, it is said "The frauds for which a bill in chancery will be sustained to set aside a judgment or decree between the same parties rendered by a court of competent jurisdiction, are frauds extrinsic or collateral to the matter tried by the first court and not a fraud which was in issue in that suit." Applied to the case at bar fraud was in issue in the proceedings had by the trustee and the bankrupt before the Los Angeles court which were determined against them. We submit that in the trustee's proceedings at Los Angeles under the issues tendered they were able to have the court determine the issue of both intrinsic and extrinsic fraud but the issue having been tendered before the Los Angeles court by the trustee and the bankrupt and having been "denied, not proved" and determined against them, the issue of intrinsic fraud is no longer available to them before the referee and no extrinsic fraud is charged in the referee proceedings. Further quoting from the *Throckmorton* case: "The cases in which such relief has been granted are those in which by fraud or deception practiced on the unsuccessful party he has been prevented from exhibiting fully his case by reason of which there has never been a real contest before the court of the subject matter of the suit. That the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree between the same parties rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first court and not to a fraud on the matter to which a decree was rendered." That the mischief of retrying every case in which the judgment or decree rendered on false testimony, given by perjured witnesses by reason of the endless nature of the strife, is

greater than any compensation arising from doing justice in individual cases. In fact, one great, if not fatal defect in the bill is the absence of any declaration by which the fraud has been discovered or can be now established.

In *Prudence Corp. v. Geist*, 316 U. S. 89, at p. 95, cited in the majority opinion, it is said that it is for that court to define and apply Federal law in determining the extent to which the equitable conduct of a claimant in acquiring or asserting his claim in bankruptcy requires it in classification of claims but not without appropriate regard for rights acquired under rules of state law. We submit neither the Federal law or the rules of state law, as we have shown would permit retrial of intrinsic fraud before the referee in the face of the plea of *res adjudicata* upon a charge that Heiser "apparently" testified falsely before the Los Angeles court at the time the judgment was entered, March 20, 1939, with no other or further charge of just what he "apparently" testified to and what evidence exists thereof. There is none in the record here.

In *Pepper v. Litton*, 308 U. S. 295, we submit that the technical proceeding under Virginia law filed by the trustee would not have availed him an opportunity to tender the issue of fraud involved in that case, which was collusion between the creditor and the bankrupt ("where the confessed judgment was merely a step in a general fraudulent plan to defeat the creditors," etc.), and the proceeding was had before the referee without a plea of *res adjudicata*. This is a far cry from the situation before the referee in the case at bar, for here the trustee charged "fraud in obtaining the judgment" which was denied and not proved, as held by the Ninth Circuit

Court and the transcript [Exhibit DD] of the proceedings had before the Los Angeles court fully show that the issue that "fraud" was practiced upon the court with respect to the entry of judgment, and that the "judgment is based upon fictitious values and was obtained by methods which amounted to a constructive fraud and in the event the said judgment was set aside can be defeated in whole at a trial on the merits." Therefore the proceedings themselves show that the issue of fraud was before the court, notwithstanding that the determination of the fraud issue against the trustee and the bankrupt was abandoned in the appeal to the Ninth Circuit Court except to assert that fraud was in issue in order to establish before the Ninth Circuit Court that the proceeding in the District Court in effect an independent equity action based upon fraud, and as such appealable as a final decision. Otherwise had the trustee and the bankrupt limited their proceeding to a motion under 60d for intrinsic fraud the appeal would have been dismissed, as shown by the unanimous opinion.

The law must intend that something was settled by the judgment against the trustee and bankrupt in the Los Angeles District Court and in the appeal therefrom. The doctrine of *res adjudicata* has been variously stated. Without repeating all the definitions and varying shades of thought, we quote from 34 Corp. Jur. p. 743, paragraph 1154:

> "Any right, fact or matter in issue and directly adjudicated upon, or necessarily involved in, the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and

privies whether the claim or demand, purpose or subject matter of the two suits is the same or not."

In *Flood v. Templeton*, 152 Cal. 148, at p. 155, 92 Pac. 78, 81, 13 L. R. A., N. S. 1579, the rule was thusly stated:

> "The rule is that it will not relieve when the fraud charged relates to matters upon which the judgment was regularly obtained and where an opportunity was given to the party against whom it was entered to contest the matters in issue, or present any defense which was available, fraud which was directed to or bore upon the claims in issue which was before the court for determination, as when a judgment is entered on a fraudulent claim, or is procured by false testimony where the party had an opportunity to be heard as to these matters."

Freeman on Judgments, Vol. 3, p. 2567, 5th Ed. 1925, put the accent on perhaps the main distinction between intrinsic and extrinsic fraud:

> "It must be borne in mind that it is not fraud in the cause of action but fraud in its management which entitled a party to relief."

The effect of the contest before the referee in the case at bar is to annul the judgment of the Los Angeles District Court on the contest between the trustee representing the creditors and the bankrupt on the one side and claimant Heiser on the other, the same parties and also to annul the judgment of the Ninth Circuit Court affirming the decision of the District Court where the referee's determination reverses the determination of these two courts. In *Vance v. Burbank*, 101 U. S. 514 it is held that false testimony is not enough. It is sufficient

to say regarding this fraud charge before the referee, that if in fact it existed, was discovered long before the contest in the Los Angeles court and if it had any importance in the case the amplest opportunity was given to the trustee and the bankrupt and before the District Court and the Ninth Circuit Court to show error and get relief. This rule is fully commented on in 31 Am. Jur. 230, 232, paras. 654, 655, and 656. It is upheld in Oklahoma in *Clinto v. Miller*, 96 Okla. 71, citing R. C. L. and in *El Reno etc. v. Sutton*, 41 Okla. 297. These cases hold "Intrinsic fraud is not sufficient for equitable relief."

In 31 Am. Jur., paragraph 64, at p. 230, it is said:

> "The acts for which a court of equity will, on account of fraud, grant relief from a judgment, have relation to extrinsic or collateral fraud; intrinsic fraud is not sufficient for equitable relief. Fraud has been regarded as intrinsic within the meaning of this rule where the fraudulent acts pertaining to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. The latter rule is set out in Root v. Woolworth, 150 U. S. 401, 37 L. Ed. 1123, 14 S. Ct. 136."

In *Kiely v. McGlynn*, 21 Wall. (U. S. 503, 22 L. Ed. 599) this rule is supported, holding that fraud will not vitiate adjudication where a plaintiff has a day in court with knowledge of, or opportunity for showing the fraud and where a party to an action at law has knowledge of a fraud which he could plead therein and neglects to do so, he cannot thereafter obtain relief in a court of equity

against the judgment at law on the ground of such fraud, and as to such the judgment must forever preclude him.

Fayerweather v. Ritch, 195 U. S. 276; 49 L. Ed. 193;

Marine Ins. v. Hodgson, 3 L. Ed. 362,

Grubb v. Public Utility, 281 U. S. 470; 478, 479;

Pickford v. Talbot, 225 U. S. 651;

Leavenworth v. Chicago Co., 134 U. S. 688;

New York L. Ins. Co. v. Bangs, 103 U. S. 780;

Brown v. Buena Vista, 95 U. S. 157;

Crim v. Handley, 94 U. S. 652.

There is no reason indicated in the majority opinion why the "contention that the material allegations in the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser, and that a fraud was thus committed on the court and the parties," was not submitted to the court in California by the proceedings had there by the trustee and the bankrupt, if such was the case, and we submit that the foregoing cases all hold that equity will not permit presentation of a claim of fraud by piece-meal to upset a judgment or in defeating it through an intrinsic attack on the "underlying claim," all of which was before the Los Angeles court in behalf of the contesting creditors.

Paragraph 655 at p. 223 of 31 Am. Jur. gives the reasons for the distinction.

> "Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be tried in an action for equitable relief against the judgment and otherwise litigation would be interminable."

We submit this equity rule applies in the Bankruptcy Court as to a retrial of the issued before the Los Angeles Court tendered by the Trustee.

It has been uniformly held that relief will not be granted against a judgment obtained by false testimony unless it appears that the alleged false, fraudulent or perjured testimony was material to the issue being tried, that except for falsity or perjury the question raised would have been fully presented or adjudicated at the former trial, which is the rule set down in *El Reno, etc. v. Sutton*, 41 Okla. 297, and that the result thereof would have been different. Most cases support the doctrine that false testimony alone does not constitute sufficient cause for equitable relief from a judgment obtained thereby.

Moffett v. U. S., 112 U. S. 24, 28 L. Ed. 623;
Nickols v. Stephens, 157 U. S. 370, 39 L. Ed. 736;
United States v. Throckmorton, supra;
People v. Cohn, supra;
Solar v. Solar, supra.

Perjury upon the part of a plaintiff is not considered as constituting a case falling within the rule permitting a court of equity to relieve a party against a judgment taken against him.

Nelson v. Meehan, 155 Fed. (1d) 12.

"The weight of authority and reason is that a claim in bankruptcy is not liquidated by a judgment after the filing of a petition in bankruptcy unless the judgment results from litigation at the direction or with the consent of the bankruptcy court."

Re Paramount Public Corp., 85 Fed. (2d) 42.

The leading Federal opinion of *U. S. v. Throckmorton*, 98 U. S. 61, 66, on the subject of fraud is upheld in this long line of California Supreme Court cases herein cited to date, and in 130 Fed. (2d) 44, 56, Fed. Sup. 234, and we submit is the accepted rule which we respectfully submit the majority opinion of this court cast aside. The fraud alleged in the objections, identical with the fraud alleged by the trustee in the proceedings in the California court, was not extrinsic or collateral to the matter which was tried and determined by the judgment of March 20, 1939, or by the judgment of the Los Angeles District Court in the proceedings commenced by the trustee in behalf of the same contesting creditors and the bankrupt, but was intrinsic fraud, which is insufficient to warrant the setting aside of either judgment under attack.

In *Pepper v. Lytton, supra*, the fraud alleged which formed the issue before the referee was plainly extrinsic. It was collusion between the bankrupt and the judgment creditor by reason of which collusion the judgment had been obtained, and in absence of the plea of *res adjudicata* based upon the previous action taken by the trustee, such a plea was held to be proper. Had it been possible for the trustee in that case to have raised such an issue before the Virginia court and had he failed so to do, and had the plea of *res adjudicata* been raised, we submit the opinion plainly shows the result would have been different.

> "A creditor so far as he relied upon bankruptcy trustee to protect the estate from improper claims, is bound by what trustee does or fails to do."

In re: American SS Nav. Co., 14 Fed. Sup. 106, affirmed in *Cooper v. Rauch*, 80 Fed. (2d) p. 1005.

The foregoing citation was adopted by Chief Justice Hughes from a decision rendered by Justice Fields on *res adjudicata* many years ago in *Cromwell v. County of Sac*. 94 U. S., 351, which has been followed in many decisions of the U. S. Supreme Court.

In the case of *Beneficial Loan Co. v. Noble*, 125 Fed. (2d) 425 at Suddiv. 6, it says: "Here, however, the bankruptcy court would not undertake to exercise its jurisdiction with respect to the allowance, rejection, or subordination of a claim, but undertook to inquire into the merits of the cause of action for fraud upon which the state court judgment was predicated and to enjoin the enforcement of that judgment on the ground that the claim of fraud was without legal validity. That is to say, it undertook to relitigate the matters which had been heard and determined by the state court. This, we think, it was precluded from doing under the doctrine of *res adjudicata*."

The charges in the affidavits of Willie Mae Woodruff and Leonard J. Woodruff, upon which they contest the claim of Heiser, we submit are merely to relitigate the identical allegations which they filed in behalf of the trustee and Woodruff before the court in Los Angeles and which had been heard and determined by it. Chief Justice Hughes said in *Chicot Co. Dist. v. Bank*, 308 U. S. 371: "Where an action is litigated and determined by judgment it is as conclusive, so far as future proceedings are concerned, as though the defenses never existed. The language therefore which is so often used that a judgment estops not only as to every ground of recovery or defenses actually presented in the action, but also as to every ground which might have been presented is strictly accurate."

When applied to the proceeding commenced by P. M. Jackson, trustee, in behalf of the creditors before the court at Los Angeles, and the judgment of the United States District Court at Los Angeles determining such proceedings in behalf of the creditors against them, and their appeal of such determination to the United States Circuit Court of Appeals for the Ninth Circuit, surely it cannot be said after reading the Transcript of the Record in that case (objector's Exhibit DD) that every general and specific charge in the objections presenting the contest of fraud before the referee which were contained in the affidavits of Willie Mae Woodruff and Leonard J. Woodruff were not alone grounds of fraud presented in the action before the District Court, because each allegation of fact is identical with those contained in said record, but certainly every one of said grounds of fraud were within the issues presented by the motion and were grounds which could have been presented within said issues and could not have been reserved for future use in continuing the litigation of the Heiser claim before the referee.

In the case at bar we have the identical allegations of fraud in the objections of the creditors before the referee, creating the issues of the contest as appeared in the pleadings and papers filed by the bankrupt in two previous hearings before the trial court at Los Angeles and by their trustee Jackson in his papers and pleadings in what was determined by the Circuit Court of Appeals of the Ninth Circuit, to have the effect of an independent action in equity to set aside the judgment and therefore appealable. We submit that in proceedings under 60(b) before the trial court the Trustee, could have raised both intrinsic and extrinsic matters and that for his equitable relief action he was limited to extrinsic fraud.

THE FINDINGS OF THE REFEREE:

At p. 151 of the Tr. Vol. I in the Certificate of Review of the referee *in re* the claim of M. E. Heiser there appears the Referee's Findings of Fact. The first Finding at p. 151 is that "Heiser testified *at the hearing to redetermine value* in *Heiser v. Woodruff*, District Court of California: 'I represented the Queensland government at the Panama Exposition as their expert cutter for demonstration in 1915 at San Francisco, cutting to demonstrate how the gems were cut and how they were mined.' In his deposition in this proceeding he stated he was not the *official representative* of any government." It then goes on to say that depositions of three Australian officials state that "Heiser was not an *official representative* of the Australian government nor of any state government of Australia, etc., but they admitted that he obtained permission to operate a small lapidist's bench in the Australian Pavilion and that he was not to sell articles therein but that he sold gem stones at his bench and the Australian Commissioners withdrew his permit to exhibit within the Australian Pavilion."

It must be borne in mind that the judgment in the *Heiser v. Woodruff* case was rendered, entered, docketed, endorsed and filed in the U. S. Circuit Court of Appeals March 20, 1939, which judgment became final three months thereafter on June 20, 1939 [Tr. Vol. I, p. 10] and the hearing redetermining value was in June 1939, determined June 29, 1939. [Tr. Vol. I, p. 274.]

The allegation of perjury to which we assume this finding refers, appears in the amendments to the objections of Willie Mae Woodruff, etc., appearing in Vol. I, p. 122 of the Transcript, wherein the allegation is made: "The claimant M. E. Heiser was guilty of fraud on the court

and on the parties to the action, and guilty of perjury in obtaining the said judgment in that, he alleged in his complaint, and *apparently* (*italics ours*) testified under oath in the District Court of the United States in and for the Southern District of California on the 20th day of March 1939, that in June and July of 1928, etc." There was no Transcript of evidence before the referee of any testimony of M. E. Heiser, under oath or otherwise, in any court on the 20th day of March 1939.

We submit there is no basis for an allegation of perjury or fraud based upon what Mr. Heiser "apparently" testified to on March 20, 1939, with nothing whatever in the record before the referee or this court as to what such testimony consisted of wherein the objector alleges perjury was committed. We submit that this charge falls of its own weight and is wholly insufficient to constitute any charge of perjury before the referee even if it were held that such a fraud was not alleged by P. M. Jackson, Trustee, in the court at Los Angeles, or that he could not have raised such issue there, or that it was extrinsic fraud. This is before this Honorable Court now and surely this charge does not warrant going back to the District Court for further proceedings.

The next Finding by the referee appearing in Vol. I, at p. 152 of the Transcript is: "All this material, according to Heiser's testimony (being the $164,000.00 of the uncut sapphires) remained in San Francisco in warehouse or Wells Fargo Bank until 1928 when it was shipped to Los Angeles, etc." There being no transcript of evidence at the proceedings of March 20, 1939, the date the judgment was entered, or of any proceedings prior thereof, we submit none of this is material even if it were to show a fraud. The Finding then goes on to state that in Los An-

geles the material was stored in the U. S. National Bank and none of it was removed until it was taken by Woodruff, and it goes on to follow with Findings similar to those alleged in Heiser's original complaint and then it proceeds to state that Woodruff bought 35 sacks of the 36 at an execution sale (had on his own judgment), and one sack was purchased by one Oreck for his son, and that Oreck testified, though it is not stated which one, that he selected what he thought was the best sack of material but that it proved later to be of no value. The next Finding is that while Heiser was in Europe the Golden State Gem Company of California (an exclusive Woodruff-Calvin Smith enterprise) was adjudged bankrupt in the bankruptcy court for $30,250.00 in behalf of Heiser by his brother-in-law, which was disallowed and on appeal the appeal was dismissed.

We submit there is nothing in these Findings of the referee, all of which appear before this court in Transcript, Vol. I, p. 151, 152 and 153, which in any way supports any fraud on the court, on the parties, or anyone, either intrinsic or extrinsic, and that each and every matter appearing in such Findings and in the objections which created the contest before the referee was before the trial court at Los Angeles on two occasions in proceedings instigated by Woodruff, and in one instance by P. M. Jackson, Trustee, in behalf of the creditors, and both before the Circuit Court of Appeals, Ninth Circuit, affirming the lower court against them. They are fully set up in the proposed answers of P. M. Jackson, Trustee, and Leonard Woodruff, filed in the proceedings before the trial court of Los Angeles in the affirmative defenses therein, which are set up in the Transcript of the Los Angeles trial court proceedings (objector's Exhibit DD, pp. 132 and 248) in the present case.

In the Transcript of the Record in the case before the Ninth Circuit of the Circuit Court of Appeals [objector's Exhibit DD] the answer of Woodruff appears at p. 132 thereof, and the answer of P. M. Jackson, Trustee, appears at p. 248 thereof. Both of these proposed answers formed a part of the issues tendered by the proceedings of P. M. Jackson, Trustee, in the trial court at Los Angeles and so expressly declared in the notice of motion filed by P. M. Jackson Trustee, therein. [objector's Exhibit DD, p. 277.] In the proposed answer of the Trustee filed in support of his proceedings before the Los Angeles trial court [objector's Exhibit DD, p. 248] each of the material allegations of the complaint of M. E. Heiser are denied raising the issue that the allegations of the complaint are false and untrue. In paragraph VI of the complaint [objector's Exhibit DD, at p. 4] Heiser alleges that he was the sole and exclusive owner of the raw gem material specifically described therein, which is the same material set up in the amendments to the objections of Willie Mae Woodruff to the claim of M. E. Heiser appearing in Transcript Vol. I, p. 123, wherein the objector alleges that in truth and in fact the plaintiff Heiser was not possessed of the said gems, etc., and M. E. Heiser in his complaint alleges "that at all times herein referred to plaintiff was in possession of and at all times herein referred to entitled to possession of the raw gems." In the proposed answer of the Trustee, at p. 250 of the objector's Exhibit DD, the trustee "denies each and every allegation contained in said paragraph VI" and the trustee goes on to allege that he is "advised that on or about the first day of September 1928, that said M. E. Heiser sold, transferred and parted with possession and ownership of said property alleged in said paragraph VI by transferring the same to the Golden State

Gem Company of Nevada and received in payment therefor certain shares of stock from said corporation." And again in paragraph X of the proposed answer of the Trustee in the proceedings at Los Angeles, appearing at p. 254 of objector's Exhibit DD, the Trustee, alleges "that said M. E. Heiser did cause to be sent to Los Angeles some 40 sacks of gravel which were of no or little value and in no event exceeding the sum of $1,000.00."

On pages 268 and 269 of the objector's Exhibit DD in the affirmative defense to plaintiff's complaint set up by P. M. Jackson, Trustee, and filed in said Los Angeles court in his proceedings there, the Trustee, alleges: "that the said plaintiff herein filed in the bankruptcy proceedings then pending in the United States District Court, Southern District of California, Central Division, entitled: In the matter of the Golden State Gem Company of California, a corporation, Bankrupt, his verified claim and demand for payment to him of $30,250.00 for the raw gems, sapphires and all stones mentioned in his complaint herein, and which he had sold and delivered to the Golden State Gem Company of Nevada" and the Trustee sets up the same allegations with regard to that claim and the filing thereof as are set up in the objector's charges as fraud and at page 270 of objector's Exhibit DD in his proposed answer P. M. Jackson, Trustee sets up the so-called "Mrs. Loller case," which is another allegation in the objections before the Referee.

As we have heretofore shown, the affidavits and proposed answers filed by Leonard J. Woodruff and the trustee, before the Los Angeles trial court upon which their proceedings were based appearing before this court in objectors Exhibit DD, likewise clearly set up all of these allegations which form a part of the charges before

the referee including those excepted in the majority opinion. We submit there is nothing contained in the charges of the objections before the referee raising any different issue whatever than that tendered before the trial court at Los Angles previously on two different occasions, appearing in the Transcript of said proceedings [objector's Exhibit DD] which was before the Circuit Court of Appeals for the Ninth Circuit in the appeal of both Woodruff and P. M. Jackson, trustee.

In this Honorable Court's majority opinion it states: "It was specifically charged in the objections that the time of the filing of the suit in California and at the time of rendition of the judgment, Woodruff was not indebted to Heiser in any amount; that the material allegations contained in the complaint were untrue." Bearing in mind that the judgment was rendered, entered, docketed, endorsed, and filed on March 20, 1939 [Tr. Vol. I, p. 10], and that both P. M. Jackson, trustee and Leonard J. Woodruff in their proceedings at Los Angeles denied under oath all the material allegations contained in the complaint and alleged that same were untrue, which dated to the time of the filing of the suit in California, we submit it is clear that this issue was before the trial court at Los Angeles. We submit also that in the findings of the referee on the "underlying claim" contained in the referee's certificate [Tr. Vol. I, p. 151] none of these charges are supported. This Honorable Court's opinion then refers to the charge "that the judgment was obtained through the perjured testimony given by Heiser," but the charge of objectors with regard thereto is only that M. E. Heiser "*apparently* testified under oath in the District Court at Los Angeles on the 20th day of March 1939." [Tr. Vol. I, p. 122]. We submit that the allegation that Heiser "ap-

parently testified under oath" is not sufficient to create any charge whatever of perjury, and that there is no evidence before the referee or before this court of any testimony on March 20, 1939, or prior thereto, and no such finding by the referee as evidenced by his certificate [Tr. Vol. I, p. 151]. The effect of this court's majority opinion gives substance to a piecemeal trial before the referee of a charge that at the time of filing of the suit in California and at the time of the rendition of the judgment Woodruff was not indebted to Heiser in any amount and that the material allegations contained in the complaint were untrue "notwithstanding that at the proceedings at the trial at Los Angeles appear many instances where under oath this very same issue is raised; and determines to be in issue a charge that the judgment was obtained through the use of perjured testimony given by Heiser," when the charge only alleges that "apparently" certain testimony was given by Heiser without disclosing what the "apparent testimony" may have been. In the findings set forth in the referee's certificate there is clearly no fact set out indicating any perjured testimony through which the judgment was obtained. The majority opinion holds that an allegation of fraud is contained in such a charge. We submit however that these specific charges were contained in the proceeding before the trial court and ruled upon adversely to the trustee and these creditors. Even if not, the charge of "apparently testified" is wholly insufficient to tender the issue or to create grounds of contest, and the findings of the referee contained in his certificate in nowise support any such charge. To send this charge back to the trial court as an issue tendered before the referee under these circumstances surely can do nothing more than prolong this already lengthy procedure of objectors and the bankrupt to defeat the Judgment rendered March 20, 1939.

III.

The Ninth Circuit Unanimously Held That Jackson, Trustee, and Woodruff versus Heiser Was an Independent Equitable Action Attacking the Heiser Judgment for Fraud.

We would respectfully refer this Honorable Court to the opinion in *Jackson v. Heiser, supra*, which may not have been considered on this question: "A claimed ground of appellant's motion of September 26, 1939 (the motion appealed from) was that the judgment was obtained without valid service of process. Another claimed ground of the motion was that the judgment was obtained by fraud." In referring to the charge of Jackson, Trustee, and Woodruff in the lower court, the opinion recites: "The charge that the judgment was obtained by fraud was denied and not proved." It then goes on to state: "that ground of appellant's motion appears to have been abandoned." The abandonment referred to we believe is the charge in the Circuit Court on appeal that the judgment was obtained by fraud in the lower court and was denied. That it was not proved is evident by the decision of the lower court against Jackson, Trustee, and Woodruff, which was in effect a judgment against Jackson, Trustee, and Woodruff in all of the issues raised before it. The effect of the opinion of the District Court against Jackson, Trustee, and Woodruff must necessarily be on all issues raised by them and that on all issues raised by them the charge was not proved. This is elementary. Furthermore, the proceeding in the lower court was by motion. Rule 12 of the Rules of Civil Procedure provides: "A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this

rule and does not include herein all objections then available to him which this rule says are to be raised by him, he shall not thereafter make a motion based upon any defenses or objections so submitted, except that prior to making any other motions under this rule he may make a motion under which are joined all the defenses numbered 1 to 5 in sub-division (b) of this rule, which he cares to assert." This is of course in furtherance of the elementary rule of *res adjudicata* not only as to those matters which were decided, but also as to all matters which could have been presented for decision. *Chico Dist. v. Bank*, 308 U. S. 371, 378; *Moffett v. Robbins*, 81 Fed. (2d) 431.

In the unanimous opinion of the Ninth Circuit Court on the trustee's appeal the opinion shows on its face that its opinion that the order of September 26, 1939, determining the proceedings filed in behalf of the trustee was a final decision and therefore was appealable, was based on the case of *Stevirmac v. Ditman*, 245 U. S. 210, 214, 216, and *Rust v. United Water Works Co.*, 8 Cir. 70 F. 129, 132, both of which cases were cited by the trustee in his behalf on appeal to give the Circuit Court jurisdiction and accepted by the opinion of the court. The *Stevirmac* case decides that where in a separate and distinct proceeding it was attempted to set aside a judgment "because of collusion and fraud charged in the institution and conduct of the prior litigation and in the procurement of the decree, it is reviewable." In the *Rust* case the proceeding filed by the receiver alleged "that the judgment was obtained by collusion, in fraud of the rights of the corporation." The gravamen of the proceedings in those cases was *fraud* in the institution and conduct of the prior litigation and the procurement of the decree in respect of which relief was sought, for which reason it was held that irrespective of

what the proceeding may be if it was on the ground of *fraud* it was a distinct proceeding and therefore appealable because in effect it is a separate proceeding and the decision final. Thus we have a situation where the original judgment in the *Heiser v. Woodruff* case at Los Angeles became final March 20, 1939; the default had been entered February 23, 1939, more than six months had gone by from the date of entry of the default and from the date of entry of the judgment when the trustee, in behalf of the creditors and the bankrupt Woodruff, commenced the proceedings which the Ninth Circuit Court held was in effect an independent proceeding, and they were entitled to a review of the order denying them equitable relief.

Woodruff must have considered this a separate proceeding as he mentioned nothing about his previous attempts beginning on March 27, 1939, to set aside this default and ending with a denial of relief in the order of June 8, 1939. The order of the Los Angeles Court of June 8, 1939 [Tr. Vol. I. p. 263] stipulated to by Heiser and Woodruff, closes with the following statement by the court: "It is the intent and purpose of this order that such competent evidence as either party desire to present be received by the said court at said hearing and considered by it in determining the actual value of the property which plaintiff alleges was converted by the defendants." [Tr. Vol. I. p. 265.] After this protracted trial before the Los Angeles court, attended by Attorneys Ames Petersen, Edward Fitzpatrick and Robert Beveridge for Woodruff, all well-known trial lawyers of Los Angeles at the time, with many witnesses presented in behalf of defendant Woodruff, and most of the exhibits which were also presented to the referee and will show the Los Angeles court's Exhibit File mark thereon, the Los Angeles court

found that the value of the material was not less than the value stated in the judgment and he refused to lower the amount of the judgment which the parties had given him the right to do if after the hearing he found the value to be less than the amount stated in the judgment. At the trial of those proceedings the court permitted all of the witnesses to examine the property that was at the warehouse, in front of all of the attorneys, and samples were brought into court and testimony had by both sides and many disinterested persons qualified before the court as experts.

Conclusion.

In conclusion, we submit to this Honorable Court that it is evident from the majority opinion herein that all of the foregoing situations indicated by the record may not have been considered, and particularly the Objector's Exhibit DD, being the transcript of the proceedings on appeal before the Ninth Circuit Court upon which it rendered its unanimous opinion. From this record we submit it is clear that the question of fraud, with all of its involvements and angles presented before the referee by the Woodruff family creditors' objections, were before that Court and that it would be grossly unfair and unjust in view of this record and of the findings of the referee on the "underlying claim" [Tr. Vol. I, p. 151] which form a part of the Referee's Certificate of Review, to have the bankruptcy trial court render a further opinion based on these findings, which would again come up before this Court with a lengthy record and thus force Appellee M. E. Heiser to continue on and on with this litigation by piecemeal and otherwise, and at great expense.

The injustice and inequity of this situation is further enhanced by the unusual facts. The objectors tendering the issue before the referee are all the family creditors and the bankrupt. They were all in the original Los Angeles proceedings and most of them testified there. They were the petitioners before the referee, asking that the trustee go to California to test out the validity of this claim where if successful they would have defeated the "underlying claim" of Heiser. When they lost in the proceedings before the trial court there they were the petitioning creditors again who went back to the referee and obtained authority for appeal by the trustee in their behalf. It was in their behalf that the trustee made his affidavit before the Los Angeles court in his proceedings there, that there was nothing left for the creditors to do to defeat the claim of Heiser if the Court refused to grant them relief. This averment no doubt greatly impressed the Los Angeles court and these creditors, through the trustee, were given greater consideration because thereof. And Woodruff, the bankrupt, joined the trustee in all of these proceedings. Having taken that position the majority opinion of this Honorable Court now in effect changes the accepted rule and would allow the family creditors and bankrupt Woodruff to again retry the same issues before the referee or to theorize that they did not have to make their full stand before the Los Angeles court in what in effect was an independent proceeding there, but the family creditors and bankrupt Woodruff could withhold some little pieces of fraud from the issues of fraud they tendered there and if they lost in California, as they did, then they could once again try out these morsels before the referee in another protracted hearing costly to Heiser and continue this procedure *ad infinitum*.

In the memorandum opinion of Judge Rice [Tr. Vol. I. p. 155] he says: "It is my conclusion that the action of the California court in refusing to set aside the default judgment and to modify the judgment after a hearing precipitated the filing of the bankrupcty in this court. the chief controversy in this proceeding has centered on the contest between Heiser and the bankrupt and has had to do with the judgment mentioned above." Appellee Heiser has been confronted before the referee with the filing of numerous claims of the family all stalemated with the claim of the wife of the bankrupt, Willie Mae Woodruff, allowed by the referee in the total amount of over $800,000.00, which has been reduced by Judge Rice on review by Heiser to only $18,000.00. Is this not of itself an outstanding color in the picture confronting Heiser in his attempts to end litigation? Which we submit should have been finally closed by the unanimous opinion of the United States Circuit Court of Appeals for the Ninth Circuit. Surely the bankruptcy courts cannot be used by a bankrupt and his family for the purposes resulting from this Honorable Court's majority opinion.

We pray this Honorable Court, in the interests of justice, to grant Appellee Heiser a rehearing before this Court in this matter, that this Honorable Court may examine Objector's Exhibit DD, the transcript of the record of the proceedings in the Los Angeles court upon which the appeal was taken by the trustee and the matters to which we respectfully refer the Court in this petition. Particularly is this important in fairness to the Appellee because of the reference in the majority opinion on page 5, "but the nature of the fraud referred to does not appear. And the record before us does not contain any showing that the contention that the material alle-

gations in the complaint were knowingly false, etc." True, the opinion in *Jackson v. Heiser, supra*, does not indicate the nature of the fraud except that it was in issue, denied and not proved and apparently abandoned. However, at the end of the decision appears further reference to the fraud issue and we submit that the record before this Honorable Court in this Objector's Exhibit DD does contain a showing fully of the identical issues of fraud tendered before the Los Angeles court that were tendered before the referee. We also submit that the Certificate of the Referee on Review [Tr. Vol. I, p. 151] does contain the findings of fact by the trial court, which was the referee, which are fully embodied therein under the heading "Underlying Claim."

The position of the creditors, which are the family of the bankrupt as shown by the record before this Court, is to swell the amount of their claims as high as possible to defeat the amount which would be distributed to Heiser in the event they could not again, for the fourth time, retry the issues of fraud tendered, or that were available to them to be tendered, in the litigation had at the expense of the estate in California on orders of the referee based on their petition therefore is not well taken in equity.

Respectfully submitted,

LEONARD J. MEYBERG,
RUPERT B. TURNBULL,
Attorneys for Petitioner.

Certificate of Counsel.

I do hereby certify that, in my judgment, the foregoing petition for rehearing is well founded and I do further certify that said petition is not interposed for the purpose of delay.

LEONARD J. MEYBERG,
RUPERT B. TURNBULL,
Counsel for Petitioner.

FILED
AUG 30 1945
Robert B Cartwright
CLERK

APPENDIX.

Opinion of the United States Circuit Court of Appeals for the Tenth Circuit.

No. 3052—May Term, 1945.

Willie Mae Woodruff; Howard L. Woodruff; Marguerite Woodruff; Leonard Woodruff, Jr.; Ida Belle Woodruff; and Leonard J. Woodruff, Appellants, vs. M. E. Heiser, Appellee.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

[August 11, 1945.]

Louis A. Fischl and Thos. W. Champion (H. A. Ledbetter was with them on the brief) for Appellants.

Leonard J. Meyberg and Rupert B. Turnbull (T. G. Gibson was with them on the brief) for Appellee.

Before PHILLIPS, BRATTON and HUXMAN, Circuit Judges.

BRATTON, Circuit Judge:

This is an appeal from a judgment allowing a claim in bankruptcy. A brief statement of the background may be helpful in understanding the manner in which the questions for determination arise. In 1935, M. E. Heiser sued Leonard J. Woodruff and others in the United States Court for Southern California. It was alleged in the complaint that plaintiff had been and was engaged in the business of mining and marketing raw gems, particularly emeralds, sapphires, and zircons; that in 1928, he arrived in the United States from Australia on a business trip to find and establish a regular and ready market for raw gems, mined under his control and management

in Australia; that he then owned and had in California certain sapphires, opals, zircons, and jade; that such gems were reasonably worth $164,000; and that the defendants cheated and defrauded him out of them. The defendant Woodruff failed to answer or otherwise plead in the case; plaintiff submitted evidence; and on March 20, 1939, the court entered judgment against such defendant for $164,000, together with accrued interest, aggregating $277,036.71. The defendant filed a motion to set aside the judgment. The motion was denied. The parties stipulated that the court might hear evidence respecting the value of the property of plaintiff for which damages were awarded in the judgment; and that should the court find the value to be less than the amount of the judgment, the judgment should be modified and reduced to the amount which represented the value of the property. On June 29, 1939, after hearing evidence, the court found the value of the property to be the amount fixed in the judgment.

Woodruff filed in the United States Court for Eastern Oklahoma his voluntary petition in bankruptcy; and, on July 5, 1939, an order of adjudication was entered. Heiser filed in the proceeding an unsecured claim, based upon the judgment. The referee entered an order authorizing any creditor of the estate to contest any claim filed. Willie Mae Woodruff, wife of the bankrupt, and Ida Belle Woodruff, as creditors filed objections to the claim of Heiser; and the bankrupt also filed objections. The referee authorized the trustee to employ an attorney in California and take such legal step as seemed necessary and proper to vacate the judgment. The trustee and Woodruff filed in the cause in California a joint motion to vacate the judgment, vacate the default, vacate the orders entered after the rendition of the judgment, permit

Woodruff to answer, and permit the trustee to intervene. The court denied the motion, Woodruff and the trustee appealed, and the order was affirmed. Jackson v. Heiser, 111 F. (2d) 310. The referee later heard evidence and disallowed the claim in toto; on review, the district court entered judgment allowing it in full; and by order, the court authorized the objecting creditors to appeal from the judgment.

The action of the district court in allowing the claim was predicated upon the conclusion that the proceedings in California constituted *res judicata* of the matters set up in the objections. Section 2 of the Bankruptcy Act, as amended, 52 Stat. 840, 11 U. S. C. A. §11, provides among other things that the district courts sitting in bankruptcy shall be vested with such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in proceedings under the act; and that they may make such orders and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of the act. A court of bankruptcy is essentially a court of equity, and its proceedings are inherently proceedings in equity. It exercises equitable powers of wide sweep in relation to problems arising out of the administration of bankrupt estates; and, with appropriate regard for rights acquired under the law of the state; its equitable powers may be exerted in full vigor with respect to the allowance of claims, the rejection of claims, or the subordination of claims to other claims. Pepper v. Litton, 308 U. S. 295; Prudence Realization Corp. v. Geist, 316 U. S. 89.

A bankruptcy court in which an estate is being administered has full power to inquire into the validity of an al

leged debt of the bankrupt upon which a claim against the estate is based. And the merger of the original debt or obligation into judgment does not take away the power of the bankruptcy court to inquire into its provability. Notwithstanding the change in form of the liability from a simple contract debt, or an unliquidated claim, into a judgment of a court of record, it remains the same debt and the bankruptcy court may look behind the judgment to determine the essential nature of the liability for purposes of proof and allowance or rejection. Pepper v. Litton, supra. And in the absence of a well grounded plea of *res judicata*, the trustee in bankruptcy may collaterally attack a judgment which is presented as a claim against the estate on the ground that it was founded upon no real debt of the bankrupt. Pepper v. Litton, supra.

The claim of Heiser was contested on the grounds that no personal service of summons was had upon the defendant Woodruff in the action in California; that the complaint filed in the action failed to state a cause of action under the laws of California; that the complaint showed on its face that if plaintiff ever had any cause of action, it was barred by the statutes of limitation of California; and that the judgment was void for the reason that the complaint undertook to state three separate and distinct causes of action and the judgment failed to specify the cause upon which it was rendered. By the motion to vacate the judgment, set aside the default, vacate the orders entered after the rendition of the judgment, and permit the interposition of a defense to the action, the trustee and the defendant Heiser expressly attacked the judgment on these grounds, and others. The trustee was acting for all of the creditors of the estate of the bankrupt, and the determination of such issues adverse to him con-

stitutes *res judicata* here to the extent and protects the judgment against collateral attack on those grounds. Pepper v. Litton, supra.

But the grounds of contest did not end there. It was specifically charged in the objections that at the time of the filing of the suit in California and at the time of the rendition of the judgment, Woodruff was not indebted to Heiser in any amount, that the material allegations contained in the complaint were untrue, that the judgment was obtained through the use of perjured testimony given by Heiser; and that he thus committed a fraud upon the court and the parties. The record fails to indicate that these matters were placed before the court in California, either in the motion of the defendant Heiser to vacate the judgment, in the action by the trustee and the defendant Heiser to set aside the judgment, or otherwise. Therefore the judgment did not constitute *res judicata* in respect of these issues, and the claim was open to attack on these grounds. Pepper v. Litton, supra. In reaching this conclusion we are mindful of the statement in Jackson v. Heiser, supra, that the charge of fraud in obtaining the judgment was denied, not proved, and apparently abandoned. But the nature of the fraud referred to does not appear. And the record before us does not contain any showing that the contention that the material allegations in the complaint were knowingly false, that the judgment was secured through the use of perjured testimony given by Heiser, and that a fraud thus was committed on the court and the parties was ever submitted to the court in California by motion to vacate the judgment or otherwise, or that such issues were ever expressly adjudicated by that court in favor of Heiser.

The evidence concerning the claim was extensive and presented issues of fact. But the court did not make any formal findings of fact or conclusions of law. It was the duty of the court to make findings and conclusions in accordance with Rule of Civil Procedure 52(a). And where the issues cannot be decided satisfactorily on appeal without findings of fact by the trial court, the judgment may be vacated and the cause remanded in order that findings of fact may be made. Mayo v. Lakeland Highlands Canning Co., 309 U. S. 310, Kelley v. Everglades Drainage District, 319 U. S. 415.

Where the trial court embodied in its written opinion specific findings on the material issues of fact and set out conclusions on the important questions of law involved, the cause should not be remanded for formal findings and conclusions. Carter Coal Co. v. Litz, 140 F. (2d) 934. The court rendered an opinion in writing, but it does not present the findings or conclusions of the court upon the issues open to inquiry concerning the debt or obligation underlying the judgment. And the issues can not be satisfactorily decided on appeal without findings of fact.

The provision in the judgment allowing the claim of Heiser is vacated, and the cause is remanded for appropriate action in conformity with this opinion.

HUXMAN, Circuit Judge, Dissenting.

I think the judgment of the lower court is right and should be affirmed on the ground that the issue presented is res judicata.

It is of course well settled that a bankruptcy court is not precluded from inquiring into the validity of a claim by the mere fact that it has been reduced to judgment.

but when the validity of the judgment has been adjudicated since its entry, no good reason appears why a court of bankruptcy under its equitable powers should again relitigate the same issue.

The gist of the fraud with which Heiser was charged and which was made the basis of the attempt to defeat his claim in the bankruptcy court was that he panned off a bunch of worthless stones as jewels, and by the use of perjured and false testimony as to their value obtained a default judgment in the California court which now is the basis of his claim. This is the only fraud with which he has ever been charged. It is the basis of every effort of the Woodruffs or of the trustee to resist his claim.

In my view, this question of fraud in the procurement of the default judgment has been adjudicated twice since its entry. It was first adjudicated at the hearing on Woodruff's motion to set aside the default judgment, which was filed nine days after the entry thereof. While the record is not as clear on this point as might be desired, the charge must have been made at that time that the judgment was fraudulent because the gems had no value. This must have been so because while the court refused to set the default aside, it was stipulated in open court that the court should hold a hearing as to the value of the gems, and that the amount of the judgment should be modified if required in accordance with the evidence produced at such hearing. Pursuant to this stipulation a lengthy hearing was had in which both Woodruff and Heiser appeared and participated. At the end of that adversary hearing, the court found the value of the property to be the amount of the judgment, and accordingly refused to modify the judgment. So it appears that Woodruff got everything he would have gotten had his motion been sustained and had he been permitted to answer and defend.

Immediately after the court ruled against Woodruff, he went into bankruptcy, and this proceeding resulted. The order of the court refusing to modify the amount of the judgment was entered June 29, 1939. On July 5, 1939, Woodruff was adjudged a bankrupt on his voluntary petition in the United States District Court for the Eastern District of Oklahoma. Jackson was appointed trustee on July 20, 1939. On September 11, 1939, pursuant to authority theretofore obtained, he filed a notice of motion to vacate the default judgment in the United States District Court of California where the default judgment had been obtained. He also filed an affidavit of merit in support of his motion. The notice set forth many grounds in support thereof. Among others, it stated that the motion "will be made upon the ground that a fraud was practiced upon the above entitled court with respect to the entry of said judgment." The affidavit of merit by the trustee in support of the motion to set the judgment aside, among others, recited upon information and belief that the "judgment . . . is based upon fictitious values and was obtained by methods which amounted to a constructive fraud . . . and in the event said judgment is set aside the alleged claim of said M. E. Heiser can be defeated in whole at a trial on the merits."

So here we have a direct attack upon the validity of the judgment on account of fraud in its procurement by the trustee himself. He failed in this attack in the California District Court. Why should he be permitted to raise the same question again a second time in the United States District Court of Oklahoma?

I cannot agree with the statement in the majority opinion that the issue of fraud in the procurement of the original judgment by the use of false and fraudulent testi-

mony as to the value of the gems was not placed before the California court by the trustee's motion and supporting affidavit. The notice of motion alleged fraud and the affidavit stated that the judgment was based upon fictitious values and was obtained by methods that amounted to a constructive fraud. This could mean only one thing, namely, that the testimony as to the value of the gems was fictitious, false and fraudulent. Heiser's affidavits denied that any fraud was practised upon the court. This presented a clear-cut issue of fraud in the procurement of the judgment. It was the duty of the trustee to substantiate the charge. This he failed to do.

Nor is it sufficient to say that the trustee was denied the opportunity to introduce oral testimony to support the charge. The record does not reveal that any oral testimony was offered or that the trustee was denied the right to introduce any testimony. But if he was denied this right, he should have raised the question when he appealed the case to the Circuit Court of Appeals.

Apparently the trustee abandoned the charge of fraud both in the California District Court and in the Circuit Court of Appeals. See Jackson v. Heiser, 111 F. 2d 310. But this he will not be permitted to do. One of the issues presented by both Woodruff and the trustee in their motions to vacate the judgment was fraud in the use of false and fictitious testimony relating to the value of the stones. The issue as tendered was broad enough to prove every kind and nature of fraud. It is incumbent upon one attacking the validity of a judgment to present every available ground of which he has knowledge. He may not present his claim by piece meal. Grubb v. Public Utility Com., 281 U. S. 470, 478, 479. It is not claimed that the trustee was without knowledge of the claimed facts which

would have enabled him to present the issue. He had the active help and assistance of Woodruff throughout in his efforts to vacate the judgment. Woodruff filed a motion with him to vacate this judgment.

The Circuit Court of Appeals of the Ninth Circuit treated the motion of the trustee as an independent action or proceeding attacking the judgment. The trustee tendered the issue of fraud in this proceeding and was defeated. He appealed, and abandoned the charge of fraud. A judgment is res judicata not only as to those matters which were decided, but also as to all matters which could have been presented for decision. Chicot Co. Dist. v. Bank, 308 U. S. 371, 378. Two attacks have already been made upon this judgment since its entry on the ground there was no value to these stones and that the testimony establishing the value was fraudulent, fictitious and perjured. I do not think that either the Woodruffs or the trustee is entitled to try the issue a third time.

A true copy.

Attest:

Clerk U. S. Circuit Court of Appeals, Tenth Circuit.

Order Denying Petition for Rehearing.

First Day, September Term, Tuesday, September 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the petition of appellee for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

Order Staying Mandate.

Fourth Day, September Term, Friday, September 7th, A. D. 1945. Before Honorable Orie L. Phillips, Circuit Judge.

This cause came on to be heard on the motion of appellee for a stay of the mandate herein.

On consideration whereof, it is now here ordered that said motion be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under section 3 of rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

Clerk's Certificate.

United States Circuit Court of Appeals, Tenth Circuit.

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify the foregoing as a full, true, and complete copy of the designated transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and full, true, and complete copies of certain

pleadings, record entries and proceedings, including the opinion (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said United States Circuit Court of Appeals, No. 3052, wherein Willie Mae Woodruff et al. were appellants, and M. E. Heiser was appellee, as full, true, and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 13th day of September, A. D. 1946.

(Seal, U. S. Circuit Court of Appeals, Tenth Circuit)

ROBERT B. CARTWRIGHT,
Clerk of the United States Circuit Court of Appeals, Tenth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 17, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.